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CIVIL LIBERTIES IN WAR TIME

THE world crisis and the necessity for speedy preparation for national defense and possible war gives new life to events of the World War period, events which the American people had told themselves confidently would never be repeated. The civil liberties now endangered by governmental efforts to deal with the Fifth Column were also in danger then, and many of the devices of control now to be employed are based on the experience of 1917 and 1918. If sooner or later the United States wages another war, it will go farther toward complete control of all phases of life than ever before. We shall be moving into the unknown. Yet a survey of the road we have already traveled offers suggestions as to future movements. The restriction of civil liberties during the World War is therefore reëxamined in the following pages, with suggestions as to its significance for current developments.

I

Before the United States entered the World War, President Wilson predicted a dire fate for civil liberties should we become involved. He predicted that the people would forget there was ever such a thing as tolerance. The spirit of ruthless brutality would enter into the very fiber of national life, infecting Congress, the courts, administrative officers and the people at large. Freedom of speech and the press would go in spite of protective constitutional provisions.[1] His predic-

[1] Ray Stannard Baker, *Woodrow Wilson: Life and Letters*, VI (Garden City, 1937), 506-507.

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tion was borne out in a high degree, although not wholly without protest and not without effort of government officials to prevent unnecessary repression.

We entered the war without comprehension of the control over civilian activities which would be needed. During the war period, therefore, there were hysterical demands for regimentation which was not needed at all and protests against regulation which, in the light of experience, seems to have been wholly reasonable. Because of lack of preliminary planning and preparation, the regulation of civilian activities, like the regulation of industry, was undertaken piecemeal and, throughout most of the war period, was carried on without order. Such regulation was based on a series of statutes and administrative orders which provided no clear pattern and was managed by a series of boards, committees and officials which were inadequately coördinated.

In terms of chronology, the regulation of civilian activities during the World War had its beginning in sabotage and fear of sabotage in American industries which were producing war materials for sale to the Allies before the United States became a belligerent. Large-scale destruction of property, such as took place in the Black Tom explosion in New Jersey in the summer of 1916, did not occur widely, but that explosion caused great excitement, and further depredations were greatly feared. As the entry of the United States into the war became imminent, it was realized that both industry and the military establishment of the country were vulnerable to espionage and sabotage. The Department of Justice prepared a series of bills to protect the neutrality of the United States, tighten passport regulations, punish espionage, prevent the destruction of German ships interned in United States ports and the blockading of United States harbors, and in other ways protect the United States amid the conditions of modern war. In discussing a provision of an omnibus measure which included many of the bills prepared by the Department of Justice, Senator Lee F. Overman said:

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> This is intended in order to protect our government against spies. Why, there are 100,000 spies in this country today, I am told, and more. Are we to have no law in this country to protect our naval stations, our marine and submarine bases, our dockyards, our canals, our arsenals, our factories, our mines, our telegraph stations, our wireless stations?[2]

The bill passed the Senate on February 20, 1917, toward the end of the "lame duck" session of Congress, but it failed to pass the House. On April 2, the day on which the new Congress assembled to hear President Wilson's request for a declaration of war, a similar bill was introduced. It was the subject of debate for nearly ten weeks before it became a law.

In the meantime on April 13, the Secretaries of State, War and the Navy advocated a collateral mode of preserving order by addressing a letter to the President advising the creation of a Committee on Public Information to consist of the three Secretaries or persons delegated by them and a civilian chairman who, experience proved, was to dominate the organization. The President created the Committee by executive order of April 14, 1917, and appointed George Creel, a magazine writer and former newspaperman, as chairman.[3] The Committee became a great propagandist agency for the government. It became a clearing house for dissemination of government materials, prepared releases, cartoons and posters for the molding of public opinion. It prepared speeches for delivery by "Four-minute Men" and propaganda in the form of appropriate scripts for use before motion picture audiences.[4]

At the time of the creation of the Committee on Public Information, it was said that administration officials were considering the draft of a simple bill by which Congress would establish a statutory basis for the Committee.[5] The strategy resorted to, however, was to seek broad powers of censorship

[2] 54 *Congressional Record* 3586.

[3] *Official Bulletin*, May 10, 1917, p. 4. See also James R. Mock and Cedric Larson, *Words That Won the War: The Story of the Committee on Public Information, 1917-1918* (Princeton, 1939), pp. 48-51.

[4] For discussion generally, see Mock and Larson, *op. cit.*

[5] *New York Times*, April 15, 1917.

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for the President through an amendment to the espionage bill mentioned above, powers which, had they been granted, would doubtless have been conferred upon the Committee on Public Information. Congress struggled interminably over the issue. Amendments providing for outright censorship were introduced in both houses but were rejected in spite of the insistence of the President, the Attorney General and the Postmaster General.

The President refused to surrender even after similar bills without direct censorship provisions had passed both houses and had gone to conference. At his insistence the conference committee phrased a compromise amendment which was included in the conference report.[6] Even this amendment, which made the jury rather than the President the final judge as to the damaging character of information published, was rejected by Congress as a dangerous and unnecessary censorship provision. The failure to enact stronger regulatory provisions in the Espionage Act,[7] and to deal broadly with the regulation of the spread of information and with seditious utterances, left the subject to be dealt with bit by bit in other statutes of subsequent dates and by additional agencies, new and old. The conservatism of Congress was due undoubtedly both to a genuine desire to preserve constitutional rights and to a dislike for antagonizing the press which was bitterly hostile to censorship.

In spite of the elimination of censorship amendments, the Espionage Act still contained drastic provisions. In addition to prohibiting the gathering of information about the national defenses for the use of the enemy, the statute contained a section which provided a firm basis for the curtailment of freedom of speech and of the press. That section dealt with making false statements intended to aid the enemy, and interference with military discipline and with recruiting or enlistment in the military service. The maximum penalty provided was $10,000 fine and twenty years imprisonment.[8] The Department of Justice won a long list of convictions under this section,

[6] *Ibid.*, May 26, 1917.

[7] 40 Stat. 217.

[8] 40 Stat. 217, 219.

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including among the defendants Victor L. Berger, Eugene V. Debs, "Big Bill" Haywood, and many others.[9] Another section of the Act declared non-mailable all written or pictorial items which violated the Act. Materials advocating or urging treason, insurrection or forcible resistance to any law of the United States were also declared to be non-mailable.[10] Such provisions contained a threat for any newspaper which proved recalcitrant.

II

With the enactment of the Espionage Act, the press of the country seems to have assumed that the question of censorship was settled. Before the summer was over, however, another measure, the Trading with the Enemy Act, was enacted giving direct power of censorship over communications between the United States and any foreign country.[11] By executive order the President delegated the authority not to the Committee on Public Information but to a Censorship Board, to be composed of representatives respectively of the Secretary of War, Secretary of the Navy, Postmaster General, the War Trade Board, and the Chairman of the Committee on Public Information.[12]

The same statute placed broad restrictions upon foreign language newspapers. They were forbidden to publish any item concerning the government of the United States or any other nation participating in the war, or concerning the war itself, unless they had previously filed translations with the Postmaster General. Items published in violation of the statute were declared to be non-mailable, and it was declared unlawful otherwise to distribute such publications. Having established this prohibition, the statute allowed the issuing of permits to foreign language newspapers by which they were freed from the restrictions of the statute. The permits were revokable at any time, however, and the device gave to the

[9] See Mock and Larson, *op. cit.*, pp. 42-43.

[10] 40 Stat. 217, 230. [11] 40 Stat. 411, 413.

[12] *Messages and Papers of the Presidents* (New York, 1917), XVII, 8369-8370.

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Postmaster General a drastic form of control.[13] In the hands of an unscrupulous administrator, the power given could be used for virtual blackmail.[14]

Concern for the preservation of civil liberties declined with the speed of war fervor. On May 16, 1918, the President approved a drastic Sedition Act[15] which strengthened the Espionage Act and prescribed new offenses. It provided punishment for making false statements to interfere with the success of the national forces; for obstructing sale of government bonds; for inciting various forms of disobedience in the military forces; for obstructing enlistments; for disloyal abuse of the government, the armed forces and the flag; for language showing contempt of the form of government of the United States, or the Constitution, or the military forces, or the flag, or the uniform of the army or navy; for promoting the cause of the enemy or displaying an enemy flag; for interference with production necessary to the conduct of the war; for advocating any of the prohibited acts; and for favoring by word or act the cause of any country with which the United States was at war, and opposing the cause of the United States.

A provision was included in another section of the Act to the effect that if the Postmaster General was convinced that any person or concern was using the mails in violation of the Act, the local Postmaster might be instructed to refuse to deliver any mail of any kind whatsoever to the offender. Mail addressed to such an offender was to be returned to the sender under the imprint, "Mail to this address undeliverable under the Espionage Act". This provision made possible gross violation of the rights of persons whose livelihood depended upon access to the mails, yet the Act was passed with little public discussion. When Congress authorized the President to assume control of telegraph, telephone, marine cables and radio systems of the country,[16] the President allotted the power of manage-

[13] 40 Stat. 411, 425-426. *Messages and Papers of the Presidents*, XVII, 8371.

[14] See Mock and Larson, *op. cit.*, p. 45.

[15] 40 Stat. 553.

[16] 40 Stat. 904.

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ment to the Postmaster General,[17] thereby increasing the already sweeping control of that official over communications.

In summary, legislation affecting civil liberties was piecemeal and unsystematic. It was drastic in some of its provisions; it was general in other provisions so as to permit broad interpretations. The allotment of regulatory power by statute and executive order was highly unsystematic. Apart from the subject of investigations, in which still other agencies were involved, the Committee on Public Information, the Censorship Board, the Postmaster General, and the Department of Justice were all involved. As among them it is often difficult or impossible to trace the lines of responsibility. From the point of view of winning the war, which was the principal business of the day, the legislation was perhaps fairly adequate. From the point of view of the preservation of civil liberties, it was highly defective. With more foresight on the part of legislators and administrators—assuming that the public would have permitted its exercise—control could have been planned so as to achieve desired ends without serious abuses, or, if abuses still occurred, responsibility for them could have been established more easily. It is highly desirable that in any future crisis of the kind the restraints on civil liberties which are deemed necessary shall be better planned and better organized.

III

Investigations affecting civil liberties were conducted by one or more agencies in the Justice, Treasury, Post Office, War and Navy Departments, and some work of the kind was done in still other departments. Information was pooled by the several agencies to promote speed and efficiency in detection, except when prevented by bitter rivalry such as existed between the Division of Investigation of the Department of Justice and the Secret Service of the Treasury Department.

The Division of Investigation of the Department of Justice, the forerunner of the present Federal Bureau of Investigation, had some 300 agents scattered throughout the country before

[17] *Messages and Papers of the Presidents*, XVIII, 8551-8553.

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the United States entered the war. It added another hundred by the following June. In addition, shortly before the declaration of war, the Division had organized the American Protective League, made up of private citizens eager to help capture spies and other criminals. By the middle of June 1917, the League had branches in almost 600 cities and towns, and a membership of between 80,000 and 100,000. In the following year the membership reached aproximately 250,000.[18] The organization was so fully accepted that the use of franked envelopes was authorized.

Although the League members had no power to make arrests, they performed a variety of services for the Department of Justice. They located delinquents under the Conscription Act. They investigated the antecedents and loyalty of employees and of persons seeking jobs with the government and with the Red Cross. They aided in running down facts in the thousands of cases of suspicious activities reported by people throughout the country in response to appeals for vigilance in detecting spies and persons guilty of sabotage.

Unfortunately most of the League members were untrained and undisciplined. They were too eager to punish even the mildest acts of non-conformity. The opportunity for the invasion of civil liberties by these investigators and by fanatical prosecutors was expanded by the enactment of the Sedition Act. The difficulty with that measure, said John Lord O'Brian, head of the War Emergency Division of the Department of Justice, was that it covered all degrees of conduct and speech, serious and trifling alike, "and, in the popular mind, gave the dignity of treason to what were often neighborhood quarrels or bar-room brawls." [19]

In giving instructions to United States attorneys about the administration of the Sedition Act, the Department of Justice found it advisable to add this word of caution:

[18] See Homer Cummings and Carl McFarland, *Federal Justice* (New York, 1937), p. 421.

[19] John Lord O'Brian, "Civil Liberties in War Time", *Report of the New York State Bar Association*, vol. 42, p. 304.

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> It should not be permitted to become the medium whereby efforts are made to suppress honest, legitimate criticism of the administration, or discussion of government policies; nor should it be permitted to become a medium for personal feuds or persecution. The wide scope of the act and powers conferred increase the importance of discretion in administering it. Protection of loyal persons from unjust suspicion and prosecution is quite as important as the suppression of actual disloyalty.[20]

United States attorneys demonstrated such zeal for indictment under the broad language of the Espionage Act that before the war was over the Department of Justice found it necessary to instruct them to refer all cases to the Department of Justice for advice before submitting them to a Grand Jury.[21]

The following, gleaned from charges to juries and from court opinions, are some of the expressions for which persons were haled into court with the possibility of heavy fines and long imprisonment. Convictions were not always secured, but defendants had, at the very least, exceedingly uncomfortable experiences. "Men conscripted to go to Europe are virtually condemned to death and everybody knows it." [22] "The Attorney General of the United States is so busy sending to prison men who do not stand up when the Star Spangled Banner is played that he has no time to protect the food supply from gamblers." [23] "This is a poor man's fight and a rich man's war. President Wilson and Congress ought to be assassinated. My boy and I will take to the woods and die there before we would go to war." [24] One man was brought to trial because in the privacy of his home he explained his failure to buy Liberty Bonds by saying that he wanted neither side to win but hoped the war would end in a draw and believed Germany would meet the United States and agree to just terms if overtures were made.[25] A man 63 years of age

[20] *Annual Report of the Attorney General*, 1918, p. 674.

[21] *Ibid.*

[22] Department of Justice, *Interpretations of War Statutes*, Bulletin No. 24, p. 3.

[23] *Ibid.*, Bulletin No. 15, p. 3. [24] *Ibid.*, Bulletin No. 76, p. 5.

[25] United States v. Pape, 253 Fed. 270 (1918).

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who had been given exaggerated impressions of the German strength fell afoul of the law for predicting despondently that the boys who went to war would all be killed and that Germany would never be defeated.[26]

The Postmaster General exercised freely his power to exclude from the mails publications containing materials which he deemed in violation of the law. In some instances his rulings applied not merely to issues containing objectionable matter but to subsequent issues as well, however innocent their contents. In the case of *The Masses,* a revolutionary journal published in New York, his order of exclusion was held illegal by a federal district court but was upheld by the United States Circuit Court of Appeals.[27] It is said that he excluded from the mails publications which only by far-fetched lines of reasoning could be held to be acting in violation of law.[28]

IV

The part played by the courts in defining and protecting civil liberties in cases arising out of the World War has been discussed many times.[29] Lower federal courts decided a number of cases before the end of the war. On the whole, the decisions exercised little restraint upon administrative authority. It is apparent that the courts were swayed by the same hysteria which tended to obliterate the concern of other departments of the government for the preservation of liberties. The Supreme Court did not pass upon the issues until after the Armistice was signed, and therefore did not make itself felt in the midst of the crisis. Subsequent enunciation of the "clear and present danger" doctrine as marking the limits of constitutional rights of freedom of speech and of the press[30] is significant in terms of theory, but the doctrine is so vague

[26] Grubl v. United States, 264 Fed. 44 (1920). See also Sandberg v. United States, 257 Fed. 643 (1919).

[27] See Masses Publishing Co. v. Patten, 244 Fed. 535; 245 Fed. 102; 246 Fed. 24 (1917).

[28] See Zechariah Chafee, Jr., *Freedom of Speech* (New York, 1920), pp. 107-108.

[29] See for example, Chafee, *op. cit.*, and materials cited.

[30] Schenck v. United States, 249 U. S. 47, 52 (1919).

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as to constitute a highly indefinite standard—as was indicated by later decisions.

The traditional procedure of the criminal courts at times prevented the effective handling of war cases. According to custom, bail was granted to all but the most serious offenders pending trial and while cases were being appealed, so as to minimize the inconvenience done to persons accused but not yet convicted of crime. From one point of view the need for granting bail was greater during the war than at other times, because of delays resulting from the overloaded condition of many dockets. Because the laws were new to both administrative and judicial officers, furthermore, and their interpretations unsettled, more persons than usual were held on uncertain suspicion of illegal conduct.

On the other hand, however, when persons accused of obstructing war activities were released on bail they were able to repeat the offenses for which they were awaiting trial and to commit more serious offenses. There were many such cases. The most picturesque, though doubtless not the most serious, was that of Victor L. Berger, editor of the Socialist *Milwaukee Leader* who was indicted in February 1918 for conspiracy to violate the Espionage Act. Shortly before his indictment he became the Socialist nominee for a seat in the United States Senate, and thereafter, on bail, he waged his campaign on a platform demanding, among other things, an immediate armistice and the withdrawal of United States troops from France. He was not elected, but he won over 100,000 votes and may have exerted a considerable influence on popular attitudes toward the war. He was brought to trial for the offense for which he had been indicted, and was found guilty. He remained at liberty while the decision was appealed. During that period he conducted a campaign for a seat in the United States House of Representatives and was elected. The fact that the House denied him a seat should not be allowed to obscure the fact that as a candidate for office he had been in position to continue his propaganda to discourage the prosecution of the war.[81]

[81] See Chafee, *op. cit.*, pp. 315-319.

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Such conduct by alleged lawbreakers was made possible by procedure worked out over a period of centuries for the protection of persons accused of crime. Persons irritated by the results looked enviously at the contrasting procedure of military courts, where anyone charged with military offenses was tried with vigor and dispatch. Few were aware of the injustice and brutality which were possible under the archaic procedure of military tribunals, and which occurred throughout the armed forces.[82] It was urged, therefore, that persons charged with violations of the Espionage Act, even though their conduct had to do with espionage or sabotage in industry rather than in connection with the military establishment, ought to be turned over to military courts for trial and punishment. A precedent was available in a recent act of the Parliament of Great Britain which authorized the trial by court martial of persons charged with spreading false reports or reports likely to cause disaffection in the military forces or to interfere with their success. For these and other offenses, non-military persons might be proceeded against and dealt with as if they were persons subject to military law and had committed offenses while in active service.[83]

Persons high in the administration took opposing positions on the subject. The President and the Attorney General were unwilling to weaken the protection to individuals given by American laws and customs. Assistant Attorney General Charles Warren, on the other hand, argued that because of the conditions of modern warfare many non-military offenses were as injurious as military espionage, and that guilty persons should be dealt with in the summary manner provided by military courts. He drafted and urged the adoption of a bill

[82] Criticism of the operation of military law by returning soldiers who refused to be indoctrinated with the professional soldier point of view resulted in a statute making many changes in court martial procedure. 41 Stat. 759. See "The New Articles of War", *Columbia Law Review*, XXI, 477.

[83] 5 George 5, pp. 21-22. A later statute, however, permitted trial by a civil court with a jury in the case of British civilians if such trial were elected within six days. 5 George 5, p. 69.

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prescribing such procedure.[34] Senator Chamberlain, who introduced the bill, predicted that "The moral effect of one man arrested and tried by court martial for spy activity would be worth a hundred convictions in the criminal courts."[35]

Because of the decision of the Supreme Court in Ex parte Milligan,[36] which arose during the Civil War, many senators thought the bill unconstitutional.[37] While it was being considered, the advice of the President was asked. He wrote a letter of stinging criticism, characterizing the bill as not only unconstitutional but as putting the United States "upon the level of the very people we are fighting and affecting to despise."[38] Action on the bill was suspended. Warren's conduct was denounced by the Attorney General,[39] and he found it necessary to resign his position. The administration continued to insist on the protection of civil rights by restricting military tribunals to their traditional field.[40]

V

Alien enemies were in a class by themselves. Before the United States entered the war, Department of Justice investigators collected extensive data concerning Germans and other aliens in the United States who were suspected of sabotage or espionage or the violation of United States neutrality. The data collected were available for use when the persons involved became enemies of the United States in a military sense. Toward the end of March 1917 when war appeared inevitable,

[34] S. 4364, 65th Cong., 2d sess. For a copy of the bill see the *New York Times*, April 17, 1918.

[35] *Ibid.*

[36] 4 Wallace 2 (1866).

[37] 56 *Congressional Record* 5401-5402, 5471-5472.

[38] Wilson to Overman, April 20, 1918, *New York Times*, April 23, 1918.

[39] Gregory to William Gordon, April 20, 1918, *New York Times*, April 23, 1918. 56 *Congressional Record*, Appendix, 307-308.

[40] For subsequent events see 31 Opinions of the Attorney General 356 (November 25, 1918); Edmund M. Morgan, "Court-Martial Jurisdiction Over Non-Military Persons Under the Articles of War", *Minnesota Law Review*, IV, 79; 41 Stat. 759. See Morgan, *loc. cit.*, p. 80, and DeLacey v. United States, 249 Fed. 625 (1918).

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United States attorneys and marshals were directed to be watchful and to study the relevant sections of the Revised Statutes to discover the uses to which they could be put if the President proclaimed the existence of a state of war. They were to discuss procedure with district judges and be ready for action. On April 1 a circular was sent to the United States attorneys telling them of steps which could be taken for the control of alien enemies if a proclamation were issued. Chiefs of police throughout the country were urged to be watchful in the interest of the United States. They were asked to keep track of stores of arms or ammunition in the hands of or accessible to enemy aliens, to watch the meeting places of enemies, and to take precautions against incendiary fires and the misuse of explosives. They were to see that especially pernicious agitators were restrained in so far as the laws would permit.[41]

On April 2, 1917, the day on which President Wilson appeared before Congress to ask for a declaration of war, Assistant Attorney General Charles Warren sent to the Attorney General a draft of a Presidential proclamation for dealing with enemy aliens. It was based largely on section 4067 of the Revised Statutes, which in turn was based upon the Alien Enemy Act of 1798.[42] Warren urged that the regulations prescribed be put into effect immediately. He was confident from his consideration of the reports of the special agents of the Department of Justice that Germans and German sympathizers in the United States intended to commit widespread crimes of violence at the outbreak of the war. He expected action by hundreds if not thousands of German reservists and other German sympathizers, "to destroy by fire, explosion, and other forms of violence, public buildings and facilities of every description, munition and other factories, and to attack public officials." [43]

The proclamation had to wait until April 6, the date of the formal declaration of war, when it was published over the

[41] Cummings and McFarland, *op. cit.*, p. 417 and materials cited.

[42] 1 Stat. 577.

[43] Cummings and McFarland, *op. cit.*, p. 417 and materials cited.

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signature of the President. It warned enemies to obey the laws, forbade the possession of firearms and other dangerous articles, forbade approach to forts, arsenals, and other points, and provided for detention or internment of offenders.[44] A letter to be publicized by United States attorneys and marshals was sent out saying, "No German enemy in this country, who has not hitherto been implicated in plots against the interests of the United States, need have any fear of action by the Department of Justice so long as he observes the following warning: Obey the law; keep your mouth shut."[45]

The conduct of alien enemies was closely supervised. Some 260,000 German men and 220,000 German women were registered.[46] Approximately 6,300 alien enemies were arrested under Presidential warrant. Of these more than 2,300 were turned over to military authorities for internment. Most of the remainder of this number were placed on parole.[47]

For a number of reasons the government decided against the wholesale internment policy employed by other countries engaged in the war. Following the early period of the war, most of the agents employed by the Central Powers within the United States were not enemy aliens at all but were subjects of other nations.[48] There was a scarcity of labor in industries, and great waste would have been involved in the indiscriminate withdrawal of large numbers of workers. A sense of fair play, furthermore, forbade resort to unnecessary harshness.[49]

Alien enemies were largely cut off from protection by the courts. The Department of Justice set up procedure intended to prevent the arbitrary use of power. In the case of every person detained, an investigation was made by the Division of Investigation, often aided by the officers of other intelligence services in the government. Separate investigations and re-

[44] 40 Stat. 1650.

[45] Cummings and McFarland, *op. cit.*, p. 418.

[46] *Annual Report of the Attorney General*, 1918, p. 30. The number of Austro-Hungarians was estimated at 3½ to 4 million. *Ibid.*, p. 26.

[47] *Annual Report of the Attorney General*, 1919, p. 25.

[48] *Ibid.*, 1918, p. 26.

[49] *Ibid.*, p. 27.

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ports were made by United States attorneys. Cases were then passed upon in Washington with final decision in the hands of the Attorney General. Administrative officers decided, therefore, whether individual aliens were to be interned, or paroled on bond, or released without special restrictions. In certain cases where the aliens involved had been guilty of the violation of some minor regulation and nothing more, the custom was developed of authorizing his detention for a limited period to produce a disciplinary effect.[50] All this was without benefit of judicial process.

VI

As it faces possible involvement in another war, the United States finds the problems of preserving civil liberties greatly aggravated. Now, as in 1917, there are several hundred thousand aliens in the United States who would become enemies in war. Because of the unity of many of them in subversive organizations, and because of the philosophies which many of them hold, they are more greatly to be feared now than then. To make matters worse, some subversive propagandists and organizers have acquired the shelter of American citizenship, and others have been born under it. The United States is losing, therefore, or has lost, the unanimity of sentiment concerning the essential purposes and forms of government which has made possible the easy toleration of dissent. Should the nation again resort to arms, no concern for abstract rights would prevent the enactment and enforcement of drastic restrictive legislation.

Another factor in the situation, and a further cause for the disappearance of unanimity of sentiment concerning essentials, is the loss of morale in the United States as the result of a decade of economic depression. Unemployment has frustrated the vitality and clouded the spirits of millions. Charitable relief, and relief in the form of work not demonstrated to be necessary, while they have provided physical sustenance, have taken still further from the resiliency and self-confidence that

[50] *Ibid.*, pp. 35-36.

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once characterized the American people. The younger generation has remained soft for want of challenge and opportunity, for want of experience at hard work. The older generation has grown still older in spirit through the loss of property and position and the inability to reëstablish itself. The political administration responsible for relief for the depressed third of the population has incurred the hostility of others because of the belief that it has stood in the way of a return to sound prosperity. The American mind, therefore, has become fertile soil for subversive political and economic doctrines. In the crisis of another war a watchfulness would be necessary which was not needed at all in the exuberant and prosperous era of the World War.

Part of the legislation by which the necessary control over liberties might be exerted in the event of war is already on the statute books. The statute which authorized internment of enemy aliens in earlier periods is still available.[51] It is likely to be used more fully than in the World War. In view of the damage done in other countries by Fifth Column residents, good judgment may dictate the isolation of all aliens under suspicion. In any event the emotions of the people, whipped up by news and propaganda about Fifth Columns and Trojan Horses, will probably compel resort to drastic measures.

The Espionage Act is still available for use.[52] It still prevents the use of mails for illegal purposes.[53] A new act, approved March 28, 1940, greatly increased the penalties of the Espionage Act and provided punishment for harboring or concealing any person who has committed or is about to commit an offense under the Act.[54] There is more legislation for restricting immigration and keeping a check upon immigrants than there was in 1917. The Federal Communications Commission, which was nonexistent in 1917, now has broad statu-

[51] United States Code, Title 50, sec. 21.

[52] United States Code, Title 50, secs. 31-42.

[53] United States Code, Title 18, secs. 343-345.

[54] Public No. 443, 76th Congress.

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tory jurisdiction over telephone, telegraph and radio.[55] The statute does not give the Commission the direct power of censorship, but an example of the sweeping power derived by implication is an order of June 4, 1940, providing that "Amateur radio operators and amateur radio stations licensed by the Federal Communications Commission shall not exchange communications with operators or radio stations of any foreign government or located in any foreign country."[56]

Other statutes are relevant. The Sedition Act, however, was repealed in 1921.[57] Its successor is to be found in a new statute which makes it unlawful:

> (1) to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or by the assassination of any officer of any such government;
>
> (2) with the intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence;
>
> (3) to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence; or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof.[58]

The language is not as sweeping as that of the World War Sedition Act, but it is capable of broad interpretation in time of crisis. This statute is an omnibus measure to be known as

[55] United States Code, Title 47, sec. 601.

[56] *Federal Register*, June 8, 1940, p. 2161. See Orrin E. Dunlop, Jr., "Sentries Posted on the Radio", *New York Times*, June 9, 1940, sec. 9, p. 10.

[57] 41 Stat. 1359.

[58] Public No. 670, 76th Congress. See *Congressional Record*, June 15, 1940, p. 12616. All citations from the *Congressional Record* for 1940 are made from the daily edition.

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the Alien Registration Act. It provides for the registration and fingerprinting of all aliens entering or now in the United States. In so doing it carries out the purpose of a number of other bills introduced with similar provisions. It provides a check on aliens who have entered the United States illegally, and makes possible more careful supervision of those lawfully here. It adds to the list of offenses for which aliens may be deported.[59]

On July 1 the House of Representatives passed without a word of debate or explanation and, without a record vote, a bill to require registration with the Attorney General by organizations thought to be under foreign control and engaged in subversive activities.[60] It includes every organization subject to foreign control which engages in political or civilian military activity; every other organization engaged in both civilian military and political activity; and every organization which has as its purpose the violent overthrow of government. Registration would include the most minute details as to operations and finance. Violations of the Act would be subject to heavy penalties. The Senate seems likely to give the bill careful

[59] One registration measure was introduced by Senator Reynolds as an amendment to the La Follette bill for prevention of oppressive labor practices (S. 1970). See *Congressional Record*, May 20, 1940, p. 9786. It gave way to the Alien Registration Act, mentioned above. On May 22, 1940, Martin Dies introduced H. R. 9858 which provided for the exclusion and deportation of aliens advocating subversive doctrines. The bill provided for the reduction of quotas to one third of their present figure and the virtual termination of all immigration after five years. The Act also provided for the deportation of persons certified by the chief police officer of any state, county, or municipality as a habitual criminal or other type of offender.

On April 6, 1940, the President vetoed a sweeping measure providing for "the prompt deportation of aliens engaged in espionage or sabotage, alien criminals, and other undesirable aliens." Existing laws were adequate for the deportation of aliens convicted of crime, he said. He disapproved of a mandatory provision for the deportation of aliens who, either before or after the passage of the Act, had been lawfully committed to a public or private institution as habitual users of narcotic drugs. See H. R. 6724, 76th Congress. For the veto message, see the *Congressional Record*, April 8, 1940, p. 6249.

[60] H. R. 10094, 76th Congress. See *Congressional Record*, July 1, 1940, pp. 13710-13711.

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consideration. If passed, the bill promises to be effective in giving the government mastery over subversive organizations.

Many other bills affecting aliens won prominence in the summer of 1940, amid excitement over the war in Europe. On March 23, 1939, the House of Representatives had passed a bill to provide for the exclusion and deportation of aliens who advocate "any changes in the American form of government."[61] The bill originally dealt with "fundamental" changes but was modified to include "any" changes. The bill was reported in the Senate on May 27, 1940. On June 5, 1940, the House of Representatives passed a bill to provide "for the prompt deportation of aliens engaging in espionage or sabotage, alien criminals, and other undesirable aliens."[62]

A bill for the deportation of Harry Renton Bridges was passed by the House of Representatives on June 13, 1940.[63] Bridges, the C.I.O. president of the International Longshoremen and Warehouse Union, has been an effective trouble maker for employers on the Pacific Coast. Attempts to secure his deportation under present laws have failed. The sentiments of many persons are well expressed in the comment of Senator Robert R. Reynolds of North Carolina that "With the deportation of Harry Bridges, whom we all know to be a Communist, I say that one of the stallions in the herd of Trojan horses will be deported from this country, and no longer will he be permitted to graze upon the green grasses in the dales and along the hillsides of America." He expressed high hopes that the bill would be speedily passed by both houses.[64]

In a letter to the chairman of the Senate Committee on Immigration, Attorney General Jackson denounced the Bridges deportation bill. It would be the first time, he said, since the Alien and Sedition Laws of a century and a half ago that any law "would provide for a deportation without a hearing or without, indeed, the slightest pretense toward giving the

[61] H. R. 4860, 76th Congress.

[62] H. R. 9774, 76th Congress.

[63] H. R. 9766, 76th Congress.

[64] *Congressional Record*, May 22, 1940, p. 10062.

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accused what our nation has long known as 'due process of law.'" [65]

Concern about trouble from across the eighteen hundred mile border line between the United States and Mexico has provoked the introduction of bills to provide more effective watch over secret and illegal entry into the United States. The number of Germans is said to be increasing, and German and Communist trouble makers are reported working together. Mexico could easily become a haven for spies preying upon the United States. Three recent bills, therefore, provide for the erection of observation stations along the entire border with illuminating equipment by night so that the border might be kept under inspection at all times.[66] Congress has already provided for substantial additions to border patrol personnel and equipment, including three autogyros.[67]

Two important amendments affecting aliens were incorporated by the Senate into the La Follette bill for the prevention of oppressive labor practices.[68] One of these amendments forbade any person engaged in interstate or foreign commerce to employ more than ten per cent of aliens in the total number of employees. Within that ten per cent, preference was to be given to aliens who had declared their intentions to become citizens of the United States. Not more than ten per cent of a payroll was to be paid to aliens.[69]

The other amendment added to the La Follette bill forbade the employment in interstate or foreign commerce of any Communist or member of any Nazi Bund organization. A maximum penalty of $10,000 fine or five years imprisonment was prescribed for employers violating the Act.[70] The im-

[65] *New York Times*, June 20, 1940.

[66] H. R. 9863, H. R. 9903, and S. 4071, 76th Congress. See the *Congressional Record*, May 22, 1940, pp. 10063-10065, May 24, 1940, pp. 10320-10322, May 27, 1940, pp. 10489-10490, May 31, 1940, pp. 11143-11144.

[67] *New York Times*, July 7, 1940. [68] S. 1970, 76th Congress.

[69] Title II of S. 1970 as passed by the Senate. See *Congressional Record*, May 27, 1940, p. 10485.

[70] Title III of S. 1970 as passed by the Senate. See *Congressional Record*, May 27, 1940, p. 10486.

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plication of the amendment was drastic. The burden of responsibility was placed on the employer. To avoid the possibility of heavy penalties he must conduct inquisitions into the beliefs and affiliations of his employees. The measure provided ample excuse for spying on employees for other purposes. The first amendment was serious enough in that it had the effect of providing for private rather than public investigation of citizenship. The bill went to the House of Representatives with both amendments incorporated in it.

Other bills, still pending or recently enacted, are relevant. The relief measure which was approved June 26, 1940,[71] contains a provision that

> No alien, no Communist, and no member of any Nazi Bund Organization shall be given employment or continued in employment on any work project prosecuted under the appropriations contained in this joint resolution and no part of the money appropriated in this joint resolution shall be available to pay any person who has not made or who does not make affidavit as to United States citizenship and to the effect that he is not a Communist and not a member of any Nazi Bund Organization, such affidavit to be considered prima facie evidence of such citizenship and that he is not a Communist and not a member of any Nazi Bund Organization.

A bill to amend the National Labor Relations Act which passed the House of Representatives June 7, 1940, carried an amendment to the effect that employers were not bound to bargain with labor representatives who were not citizens of the United States.[72] Under the law, therefore, unions could not use alien leaders, such as Harry Bridges, as their bargaining agents.

A bill has been introduced providing that United States citizenship shall be prerequisite to owning, publishing or editing any kind of publication intended for use by the public.[73]

[71] Public Resolution No. 88, 76th Congress.

[72] H. R. 9195, 76th Congress. For the bill as passed by the House of Representatives, see *Congressional Record* for June 7, 1940, pp. 11808-11811.

[73] H. R. 9977, 76th Congress.

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Another bill makes it unlawful for any alien to have in his possession any arms or ammunition or other articles which might be implements of war.[74] There will doubtless be other bills of the kind.

These several bills indicate the temper of the hour.[75] They promise drastic treatment for aliens who are Fifth Column suspects. They indicate the coming of suspicion and intolerance that bodes ill for aliens innocent of any wrong doing. More severe measures may be expected to come, however, if widespread opposition develops against the defense program. The legislative program, like that of 1917 and 1918, is apparently largely without system. Items are added piecemeal as the rising tide of concern about national defense makes itself felt. The lack of coördinated planning is a matter for profound regret.

VII

Official investigations of espionage, sabotage, the violation of neutrality laws and related offense are now largely in the hands of the Federal Bureau of Investigation. On September 6, 1939, at the outbreak of the war in Europe, the President issued a statement requesting state and federal law enforcement officials to turn over to the Federal Bureau of Investigation any information obtained by them relating to espionage, counter-espionage, sabotage, subversive activities and violations of the neutrality laws.[76] Therefore, although the work of other agencies will be important, the Department of Justice agency will not meet with the competition or face the rivalry which it experienced during the World War. The size of its staff and the allotment of funds for its use are being increased

[74] S. 4038, 76th Congress.

[75] Restrictive measures in a number of states reveal the same spirit. That subject, however, is beyond the scope of this article. It is significant that the Solicitor General has deemed it advisable to announce that state and local governments should leave to the federal government the problems of alien control. *New York Times*, July 8, 1940.

[76] *Ibid.*, September 7, 1939.

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from time to time. The creation of a national defense investigation unit in the Bureau has been announced.[77]

The Bureau is a much more powerful organization than that which operated during the World War, and is likely to be more implacable in dealing with criminals and persons under suspicion.[78] Since 1924 it has been under the direction of J. Edgar Hoover, who had been a guiding figure since the days of the Palmer red raids and who has demonstrated capacity both for getting results and for winning favorable publicity. He has inspired jealousy at various points in the government, fear in the minds of lawbreakers, enthusiasm in the general public, and troubled distrust in the minds of careful observers who are concerned lest an American Ogpu or Gestapo be developing in Washington. The Director rules his organization with an iron hand. He probably would not be content to use the undisciplined and uncoördinated services of an American Protective League such as that which engaged in witch hunting during the World War. His publicity methods have stimulated public interest in spy hunting, however, and private organizations will turn to that pastime if given the slightest encouragement.

Many organizations have already announced their intention of aiding in the enforcement of patriotic behavior, and some have sought governmental sanction. A striking instance is that in which the National Commander of the American Legion, Raymond J. Kelly, proposed a "Service for Security Plan" by which a private army was to be organized under the auspices of the American Legion to participate in the defense program. It is said that both the United States army and the Department of Justice refused to sponsor the plan, and publicity had the effect of defeating it for the time being.[79] Both Attorney General Jackson and Solicitor General Biddle have made statements and speeches calculated to allay hysteria,

[77] *Ibid.*, June 2, 1940.

[78] See the comments of Senators Norris and Wheeler, *Congressional Record*, May 30, 1940, pp. 10927-10930, May 31, 1940, pp. 11033-11046, 11061.

[79] *New York Times*, June 28, 1940; Baltimore *Evening Sun*, June 27, 1940.

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particularly with reference to treatment of aliens, and give indirect assurance that the government is equipped to enforce its laws without organized assistance.[80] The pressure of public sentiment upon a public agency is tremendous, however. If even the courts respond to it, complete resistance on the part of a politically organized department is hardly to be expected.

The transfer of the Immigration and Naturalization Service from the Department of Labor to the Department of Justice, which was recently authorized,[81] brings about an important shift in the control of investigation of aliens in the United States or seeking to enter the United States. The Service is an administrative agency as well as one engaged in detection. It is to be under the control of the Solicitor General. Closer coördination with the Federal Bureau of Investigation seems inevitable, and perhaps a merging of investigative duties, unless prevented by organizational jealousy and distrust.[82]

Prosecution of offenders will be directed by other branches of the Department of Justice. A Neutrality Laws Unit has been established to supervise prosecutions. The lines of its organization are apparently not yet worked out, but it might well become a more powerful counterpart of the War Emergency Division of the World War, with general control of all criminal prosecutions relating to the war. By limiting prosecution it could act as a check on the Federal Bureau of Investigation should the zeal of the latter drive it to sweeping violation of constitutional rights. It could prevent United States attorneys from running wild with patriotic zeal in the handling of cases as did some of their predecessors during the World War. On the other hand it could go to the opposite extreme, and allow or stimulate United States attorneys to take fanatical and vindictive action against all offenders.

[80] See the *New York Times*, June 7, 17, and 30, 1940, and July 8, 1940.

[81] Public Resolution No. 75, 76th Congress.

[82] A significant change in policy resulting from the shifting of the Immigration and Naturalization Service from the Department of Labor to the Department of Justice is reflected in the announcement of Attorney General Jackson that no aliens are to be admitted to the United States "unless it affirmatively appears to be for the American interest." *New York Times*, June 15, 1940.

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Resort to military trial for civilian offenders, which was proposed and rejected during the World War, seems unlikely to be seriously considered again, although the situation might change if the criminal courts proved unable to keep suspected criminals out of circulation. Established procedures for protection of the rights of the accused, such as jury trial, admission to bail and the writ of habeas corpus, still have their dangers for the country in time of war. Lodgment of a single enemy sympathizer on a jury can prevent conviction, yet right of jury trial in criminal cases is protected by the Constitution.[83] Presumably it can be abrogated only by constitutional amendment, or avoided by finding a constitutional basis for resort to military instead of civil tribunals.

The Constitution also forbids the fixing of excessive bail.[84] The provision probably carries with it the implication that bail must be granted in types of cases in which it has been granted traditionally. The word "excessive" is subject to judicial definition, however, and in time of war few courts are likely to be lenient in their interpretation. Adequate demonstration of the seriousness of war-time offenses might well bring about a refusal of bail altogether.

By the suspension of the privilege of the writ of habeas corpus during the Civil War, persons thought to be dangerous but against whom there was no conclusive evidence of crime were kept in custody without trial. That privilege could not have been suspended during the World War, had there been disposition to suspend it, because there was no prerequisite in the form of rebellion or invasion such as the Constitution requires.[85] In the event of another war there might well be sufficient invasion by land or sea or air to justify suspension of the privilege; or the courts of the country might view the situation with sufficient realism to classify Fifth Column activities as rebellion or invasion. In other fields the Supreme Court proved itself a staunch defender of civil liberties during the 1939-40 term,[86] but a recent decision upholding a school re-

[83] The Constitution, Sixth Amendment.

[84] *Ibid.*, Eighth Amendment. [85] *Ibid.*, Art. I, sec. 9.

[86] Schneider v. New Jersey, 84 L. Ed. Advance Opinions 115; Chambers v. Florida, *ibid.*, p. 419.

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quirement of saluting the national flag [87] indicates that the court is in a frame of mind to support patriotic regimentation.

The establishment of some agency for the control of publicity is necessary under the conditions of modern war, whether it be called a Committee on Public Information, a Ministry of Information, or a Ministry of Propaganda. In addition to creating publicity, such an agency inevitably exercises restrictive powers as well. Its relations to other restrictive agencies are therefore important. For example, the Committee on Public Information would be likely to control and restrict information going to radio for broadcasting; it would be much concerned about the nature of any publicity not in harmony with its own. The Federal Communications Commission may be expected to forbid communications of certain kinds, as it has done already in forbidding amateur broadcasters to talk with amateurs in other countries. It may refuse to renew the license of a broadcasting station if it concludes that the station is not serving the public interest. The Department of Justice enters the picture in that it will prosecute cases involving broadcasting which violate espionage legislation or other war measures.

Some form of coördination or over-all control will therefore be necessary. Partly because of fear of development of a powerful censorship agency and partly because of lack of thoughtful planning, no over-all control was provided for during the World War. Coördination had to be worked out behind the scenes. Decentralization has the effect of preventing the concentration of excessive power in the hands of one person or one organization, yet invisible coördination obscures lines of authority and prevents the allotment of credit or blame for good work or for abuse of authority. The problem of establishing machinery is therefore in the nature of a dilemma, with danger perched on both horns. The dilemma is the more serious because machinery established for war purposes may be the machinery of government for many years to come.

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[87] Minersville School District v. Gobitus, 84 L. Ed. Advance Opinions 993.

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THE CABINET MINISTER AND ADMINISTRATION: ASQUITH, LLOYD GEORGE, CURZON

THE position of a Cabinet Minister as the head of a department under parliamentary government can be justified on two broad grounds. In the first place, he holds his office as a representative of the people, and it is his paramount duty to see that the popular will is carried into effect so far as that may be possible through the constant adjustment of departmental policies. In the second place, inasmuch as he is in supreme charge of a department, yet not a member of its permanent staff, he is supposed to bring to the work of administration a contribution of his own—something which the department itself finds difficult to supply—a freshness of outlook, a stimulus to action and a breadth of view which the members in any large-scale organization seem to lose as they become more and more immersed in their work. The first justification of the Cabinet Minister, therefore, is the democratic one of obtaining the essential popular control; the second, the practical one of greater administrative efficiency. For there is one group of problems which dominates large-scale administration to the exclusion of all others. How can the official contrive to work under set rules and with elaborate records, yet never allow formalism and minutiae to become his masters? How can a skilled administrator, subject to the restrictions on individuality which a large organization must necessarily impose, keep his vigor and his powers of initiative and originality unimpaired? "How are we to surmount", Earl Baldwin asked the British civil service, "the drawbacks of security, routine, and a pension by devices which act as incentives and provoke mobility; how send fresh currents of energy circulating through the administrative body from the central power-house of public opinion?" [1]

[1] "Public Administration", *Public Administration*, January 1934, p. 9.

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The chief answer is to recruit and organize the civil service with this aim constantly in mind: in short, to obtain the best brains available, and then see to it that those officials with marked ability reach the most important offices and work under conditions which will evoke and not suppress their finest efforts. Other devices, however, from outside the service can be utilized to supplement this general remedy, although these will naturally operate in quite different fashion. An occasional investigation by a parliamentary committee or a royal commission, or, what is frequently of equal advantage, the threat or possibility of such an enquiry, will put many civil servants on their mettle and compel them to think along new and less conventional lines. The use of laymen as advisers to government departments in certain fields [2] finds its main justification in performing what is substantially the same function. These consultative bodies are as a rule specially composed so as to give a fair cross section of public opinion, and they are thus able to bring a new perspective and fresh ideas for the consideration of the administrative officials. But the most important source of this external pressure on the civil servant is the political head of the department, whose position enables him to keep in constant touch with his officials while at the same time his power of control adds pungency to his criticism and gives weight to any suggestions he may choose to offer.

The Cabinet Minister who is content to play a passive rôle in administration thus does his department a great disservice. His officials, whether they like it or not, need to be shaken out of their lethargy and formalism; they should be frequently reminded that they are the servants of the public, and that policies and methods are to be constantly scrutinized to discover to what extent these are conducive to the general welfare. The Minister's very lack of technical qualifications should free him from prejudice and give him a different outlook from his subordinates as well as an initiative and freedom which they cannot easily obtain. His contribution to the department

[2] *Cf.* H. J. Laski, *Parliamentary Government in England* (London, 1938), pp. 346-50.

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will thus consist of a detached and critical mind, a flair for administration, and executive qualities of a high order. "To develop and concentrate thought," wrote Viscount Grey, "to evolve policy, to translate policy into practice, to choose the best professional men and to set them to work—all this is the highest example of Statesmanship acting within the limits of a single department." [3]

The enormous value of this function is fully attested by the practical experience of successful Cabinet Ministers, and the most brilliant of these have impressed themselves in no uncertain fashion upon all phases of their departments' work. The following pages will discuss the administrative activity of three of the most distinguished British Ministers in recent years—Lord Oxford and Asquith, Mr. Lloyd George, and Lord Curzon—and will illustrate the nature of the bureaucratic problem as well as the remarkable influence which a competent Minister can exert on his officials and on the departmental policy.[4] The three mentioned have been chosen not only because of their exceptional capacity as Ministers, but also because each presents entirely different qualities and equally dissimilar methods in dealing with administrative difficulties.

* * * * *

Lord Oxford, or as he is better known, Mr. Asquith, was the perfect example of the judicial Cabinet Minister, the type which surmounts obstacles and makes decisions in an atmosphere of calm dispassionate logic. For this reason he and Mr. Lloyd George formed over a long period a model cabinet team, inasmuch as what one lacked the other supplied in full measure. The brilliance, the originality, the emotion of Mr. Lloyd George were held in check, yet utilized and in a sense reinforced, by the quiet efficiency, the balance and the thoroughness of his chief.

[3] Viscount Grey, "Lord Haldane", *Public Administration*, October 1928, p. 333.

[4] For a somewhat similar discussion on H. O. Arnold-Forster, Lord Haldane and Lord Kitchener, *cf.* R. MacG. Dawson, "The Cabinet Minister and Administration: The British War Office, 1903-16", *Canadian Journal of Economics and Political Science*, November 1939, pp. 451-78.

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> Lord Oxford's intellect combined rapidity of apprehension, lucidity, critical sharpness, a copious and accurate memory, taste and discrimination, freedom both from prejudices and from illusion, with an absence of originality and creative power; and I am not sure that this want of originality was not one of the most necessary of the ingredients to produce the successful combination. His mind was built for the purpose of dealing with the given facts of the outside world; it was a mill or a machine, not a mine or a springing field. But this deficiency conserved the strength of his judgment. Lord Oxford had no intellectual fancies to lead him astray, no balloons of his own making to lift his feet off the ground. It was his business to hear and to judge; and the positions he occupied—Home Secretary, Chancellor of the Exchequer, Prime Minister — are positions best occupied, not by one ingenious to invent and to build, but by one whose business it is to hear and to judge. For this business there has been no man in this century by any means his equal.[5]

This diagnosis finds ample confirmation in the records. Asquith was one of the leaders of a group of earnest young men who set out in the late eighties to bring about social and domestic reforms through the agency of the Liberal Party.[6] When he attained cabinet office, his administration was marked by a series of intelligently progressive measures which, while certainly not conservative, were nevertheless neither precipitate nor extreme. Nothing was unduly hurried; all sides of a question were carefully explored and discussed before a decision was finally rendered; but once this had been done, he showed no lack of firmness and determination in its execution. Invariably, however, he preferred to wait upon opportunity rather than attempt to mold circumstances to fit his plans. There were occasions when he found himself a step or two ahead of his civil servants, but he was not inclined to force the pace and was even content at times to pause and wait for them to catch up. He records, for example, that some of the

[5] J. M. Keynes, *Essays in Biography* (London, 1933), p. 50.

[6] Arthur Acland, R. B. Haldane and Edward Grey were three others in the group. J. A. Spender and C. Asquith, *Life of Lord Oxford and Asquith* (London, 1932), vol. I, pp. 67-8, 77.

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changes he made at the Home Office "cannot have been altogether palatable to the veterans of the staff," and states that some of his officials viewed with particular misgiving the hazardous innovation of using women for factory inspection.[7] However, the step was recognized as being "tentative and experimental"; and only after a year's successful experience was the number of these inspectors increased.[8] When he became Chancellor of the Exchequer he found the Treasury still basking in the Gladstonian tradition; and his proposal that his first budget should distinguish between earned and unearned income was met with the conclusive argument that Gladstone had declared years before that any such scheme was impracticable. Asquith neither overruled his officials nor abandoned his measure; but before taking action "[I] thought it wise to fortify myself with . . . a strong Select Committee of the House" to report on the proposal.[9] The Committee in due course approved of both the idea and its feasibility, and in the following year it was incorporated in the budget, where it seems to have found a permanent abode. As Prime Minister, Asquith continued to exhibit the same traits; and even so sweeping a change as the Parliament Act was far from being a violent break with the past. It was in essence a compromise with the broader issue of House of Lords reform, and its basic idea of a suspensory veto was first proposed by John Bright and inherited by Asquith from his predecessor, Sir Henry Campbell-Bannerman.[10]

It is evident both from the recorded experiences within his departments and from his more public actions that his influence on administration was firm and decisive without being in any sense dictatorial. He relied on reason, rather than intuition; and his outlook was therefore to an unusual degree impersonal. "He is a peculiar man," exclaimed Mr. Lloyd George in 1909,

[7] Lord Oxford and Asquith, *Memories and Reflections* (Boston, 1928), vol. I, p. 299.

[8] *Idem, Fifty Years of British Parliament* (Toronto, 1926), vol. I, pp. 240-1.

[9] *Idem, Memories and Reflections*, vol. I, p. 302. *British H. of C. Debates*, April 30, 1906, p. 300; April 18, 1907, pp. 1202-3.

[10] Spender and Asquith, *op. cit.*, vol. I, pp. 191-2.

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"you drop in a fact—he is very unemotional—but eventually it works like a penny in the slot!"[11] He had unlimited confidence in honest enquiry, in getting at the facts, in weighing evidence, in forming deliberate judgments, in making tentative experiments.[12] His opinions were rarely, if ever, formed in haste or on insufficient data, and he was always reluctant to precipitate a conflict which might conceivably be avoided by postponement or reasonable concessions. But when the occasion demanded, he could be inflexible; and his bitter struggle with the House of Lords showed how relentless and persistent he could be once his decisions had been taken. His officials admired him, trusted him completely, and marveled at the ability and almost inexhaustible patience which he brought to his work.[13]

Asquith was, by general consent, entirely lacking in initiative and inventiveness; and it has been suggested that his fine intellectual equilibrium may have been made possible only because these more active and disturbing qualities were not present.[14] Or, of course, the reverse may have been true: his natural caution and judicial temper may have made him disinclined and possibly incapable of venturing in unfamiliar paths amid strange uncertainties. Yet he was not at all hostile to new ideas; and he would sift out from a miscellaneous assortment those which a critical survey would suggest as the most feasible or the most expedient.

> He is the constructive engineer of politics, not the seer of visions. He leaves the pioneering work to others, and follows after with his levels and his compasses to lay out the new estate. No great cause will ever owe anything to him in its inception, but when he is convinced of its justice and practicability, he will take it up with a quiet, undemonstrative firmness that means success.[15]

[11] Lucy Masterman, *C. F. G. Masterman* (London, 1939), p. 137.

[12] Spender and Asquith, *op. cit.*, vol. I, pp. 208-10. Herbert Asquith, *Moments of Memory* (London, 1937), pp. 89-90.

[13] Spender and Asquith, *op. cit.*, vol. II, pp. 286-7, 376-7; Sir L. Guillemard, *Trivial Fond Records* (London, 1937), pp. 34-5.

[14] J. M. Keynes, *supra*, p. 351.

[15] A. G. Gardiner, *Prophets, Priests, and Kings* (London, 1915), p. 59.

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This combination of patience, caution and sound selective judgment was almost an ideal equipment for a Prime Minister, who is usually able to rely upon his colleagues to furnish the more dynamic qualities in the Cabinet. Nor, indeed, does this type of mind necessarily fail as a constructive force within a single department. A Minister is not limited to the exercise of initiative directly on his motion alone; he can accomplish a great deal by utilizing the talents of his officials and inducing them to initiate their own measures. He can convince them that their suggestions will always be warmly received, that he will give their ideas a careful and sympathetic hearing, that he will be quick in his appreciation and generous in his praise. He can, in short, contribute a receptive mind, and provide a favorable environment in which the delicate plants of constructive ability and resourcefulness can take root and flourish. So far, but no farther, could Asquith's powers of initiative be said to extend. Unhappily under such conditions the crop of seedlings is often small; and they rarely possess the same vitality and independent habits of those which spring directly from the more sturdy ministerial stem.

The sequel is not without its moral, and it has an indirect bearing on the problem under discussion. So long as the nation was at peace, Asquith's talents were fully adequate to the demands made upon them. But the war increased enormously the pressure under which government action had to be taken. Emergencies succeeded one another in an unending sequence, decisions had to be made with unusual speed and preciseness, and temporizing policies were not only inadequate but highly dangerous. Delay and compromise had thus ceased to be virtues; yet Asquith's whole training and genius for leadership inevitably led him to favor such a policy; and, indeed, much can be said in his defense. To lead a Cabinet in time of war was at best a difficult problem; but fortunately or unfortunately this was no ordinary Cabinet, obedient to the rule of its head. It contained no less than three potential strategists—Lord Kitchener, Mr. Winston Churchill and Mr. Lloyd George—each of whom burned with a desire to convince

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the War Council that his plans were the most feasible. The situation was not at all simplified by the fact that the imagination and resourcefulness of the two amateur soldiers towered above those of the professional, and that time and again they were proved to have been in the right and the latter in the wrong. Asquith's inclinations were all in favor of preventing the civilians from interfering with the soldiers in military questions; but the conflict among the experts, the errors of military judgment, the brilliance of the amateurs, and the overlapping of political and military issues made this an exhausting and, indeed, an impossible task.

In the rôle of Prime Minister at such a time Asquith was clearly miscast, and he would have been equally out of place in any department which demanded drive, quick action and originality from its chief. The absence of any initiative in the positive sense became in war a grave deficiency; while the tendency to discuss, to make lengthy investigations and to postpone making decisions on urgent matters, proved paralyzing to the national effort.[16] Sagacity and deliberation had to give place to a more rapid though perhaps less accurate judgment, willing to assume risks and try venturesome expedients which offered a reasonable chance of success. Asquith, moreover, had other deficiencies which the war conditions tended to accentuate. His judicial temper of mind had always been accompanied by a reserve which usually hid all emotion, and this lack of warmth and magnetism had prevented his ever becoming a very popular figure. After two years of unsuccessful war the people demanded a national leader, "a man of push and go" (to turn Mr. Lloyd George's phrase back on himself), one who would give them plenty of action and plenty of color. The "russet-coated captain"[17] gave way, perforce, to the gallant and more brilliant figure in scarlet and gold.

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[16] Spender and Asquith, *op. cit.*, vol. II, pp. 279-82. D. Lloyd George, *War Memoirs*, vol. II (London, 1933), pp. 973-8, 1006-10. W. S. Churchill, *The World Crisis*, vol. III (London, 1927), pp. 238-51. Blanche E. C. Dugdale, *Arthur James Balfour* (London, 1936), vol. II, pp. 156-7, 184-5.

[17] A. G. Gardiner, "Asquith", *Nineteenth Century*, November 1932, p. 608.

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A War Minister, wrote Mr. Lloyd George, must be able not only to give rousing and vigorous leadership to the nation, he

> must also have vision, imagination and initiative—he must show untiring assiduity, must exercise constant oversight and supervision of every sphere of war activity, must possess driving force to energise this activity, must be in continuous consultation with experts, official and unofficial, as to the best means of utilising the resources of the country in conjunction with Allies for the achievement of victory. If to this can be added a flair for conducting a great fight, then you have an ideal War Minister.[18]

In these words Mr. Lloyd George attempted to indicate the characteristics which he found wanting in Mr. Asquith, and one can scarcely assume that he was entirely unmindful of himself when these specifications were being drafted. Certainly his ideal Prime Minister bore a most striking, if accidental, resemblance to Asquith's virile successor, Mr. Lloyd George.

The first characteristic on the list is the one in which he differed most markedly from Asquith, namely, the imagination and resourcefulness with which he approached every problem. He was not the type who needed to rely on initiative by proxy; he had it within himself in "good measure pressed down, shaken together, and running over." To this he added amazing courage and self-confidence, so that every additional difficulty acted merely as a taunt to his pride and a spur to his talents. During the latter part of the war, when this trait was most pronounced, "he seemed to have a peculiar power of drawing from misfortune itself the means of future success. From the U-boat depredations he obtained the convoy system; out of the disaster of Caporetto he extracted the Supreme War Council; from the catastrophe of the 21st of March he drew the Unified Command and the immense American reinforcement." [19] Moreover, these were largely remedies of his own devising for the adoption of which he was forced to struggle

[18] Lloyd George, *op. cit.*, vol. II, pp. 1008-9.

[19] Churchill, *op. cit.*, vol. III, p. 257.

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long and valiantly, and they serve as dramatic illustrations of both his adaptive genius and his superb courage. Any custom, any procedure, any institution was liable to be dissected and minutely examined, and he was prepared unhesitatingly to revise or scrap, in whole or in part, anything which appeared to stand in the way of success.[20]

Mr. Lloyd George's unique ability as an administrator is most clearly seen in the middle portion of his official life before he became Prime Minister. His unusual flexibility and his rapidity in grasping essentials compelled him in the early days of the war to be the outspoken critic of the War Office. Nothing exasperated him more than the unimaginative soldiers who clung with dazed stupidity to outworn methods and institutions, and who, while resenting any external interference, lacked the ability to make the necessary adjustments themselves. "It is amusing", wrote Lord Esher, "to see him among our stolid officers. It is like a fire burning away in the midst of a frozen world."[21] Fortunately, Mr. Lloyd George was more enraged than amused by the contrast, and one result of his fury was the establishment of a new Ministry under his supervision charged with the organization of a nation-wide munitions industry. Perhaps the best guide to his courage and initiative is found in his account of the tremendous problems with which he as Minister of Munitions was immediately confronted. The innumerable demands made by the army in the field; the multiplicity of materials, processes and coördinations which must necessarily precede the production of these goods; the gathering of information on the resources of material, machinery and labor available in Great Britain and elsewhere; the ascertaining of the state of munitions manufacture as it existed at that time; the necessity for creating and organizing a competent staff; the invention of methods whereby the means of production might be increased; the securing of the coöperation of the manufacturers and the

[20] E. T. Raymond, *Mr. Lloyd George* (London, 1922), pp. 237-9.

[21] *Journals and Letters of Reginald, Viscount Esher*, vol. IV (London, 1938), p. 107.

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trade unions; and above all, the constant need for speed—these might well appall an even stouter heart than that of Mr. Lloyd George.[22] But his account reveals few signs of dismay; in fact it rather suggests that the more forbidding the prospect appeared, the greater became his anxiety to begin his work. Thirteen months later when he became Secretary for War, he left behind a large, powerful organization functioning with enormous success.

The way in which these tasks were accomplished through the construction of a new department and the bringing of animation and intelligence to those decadent parts of the War Office which came under his control is a fascinating story. He began with a building, two secretaries, a chair and a table, and with that modest equipment he went into action. His first need, aside from furniture, was personnel, and he proceeded to ransack the business world for proved executive capacity. Finance, railways, engineering, coal, publishing, shipping, law and others all paid their toll in talent. Obviously few of these men were specialists in the manufacture of munitions; but they had been trained to handle large undertakings and were chosen by Mr. Lloyd George, not because they were "careful and cautious", but rather as "great improvisers", each of whom could "build up a business of which he knew nothing."[23] This idea underlay all these appointments, and although it caused misgiving in some quarters, the events more than proved its fundamental soundness.

To control this "formidable battery of dynamic energy" (as Mr. Lloyd George called it) the Minister fell back upon more orthodox methods. Certain activities were placed almost entirely under the direction of technically trained men recruited from the War Office and the armament firms; others, such as explosives, were given to distinguished scientists; while the secretariat and other similar posts were staffed by the permanent civil servants who were borrowed from other

[22] Lloyd George, *op. cit.*, vol. I (London, 1933), pp. 237-353; vol. II, pp. 548-654.

[23] Lloyd George, *op. cit.*, vol. I, p. 247; *cf. ibid.*, pp. 245-55; C. Addison, *Politics from Within* (London, 1924), vol. I, pp. 80-1.

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departments. The Director-General of Munitions, a technical officer, was supposed to harmonize the work of the industrial hustlers; but inasmuch as each of the latter had the right of personal access to Mr. Lloyd George, they were subject to little if any curb or direction from their nominal head. This, however, was regarded as a trifling fault in the early days of the department when the overmastering need was to increase output. The drive, ambition and initiative of the business executives had to be encouraged and not thwarted by restrictions and formalities, and any excessive production at this stage in the war was virtually impossible. Urgency of supply had unlimited priority over all other claims, and this loose and informal organization yielded the desired results with very little delay. Later, however, when the pressing need had somewhat abated, the rivalries of the different branches of the Ministry became relatively more serious, and when Mr. Winston Churchill took over the department in 1917, one of his first tasks was the coördination of its many competing activities.[24]

In order to keep the machine running at top speed Mr. Lloyd George instituted a system of weekly reports from each branch. These passed through the statistical department and were then sent to him in a summarized form which clearly set out the results obtained against the anticipated production. Having digested these facts, the Minister used them as a basis for the notes and queries which he addressed to the different branches inquiring the reasons for any failure or delay in reaching the expected output. Another useful device was the gathering of the heads of the different branches at a weekly meeting. Here difficulties were discussed, greater coöperation, particularly in matters of supply, obtained, and vigorous competition fostered. The conduct of business by memoranda, shuttling back and forth from one official to another and causing in the process frequent delays, was discouraged, and personal inter-

[24] *History of the Ministry of Munitions* (London, 1921), vol. II, Part I, pp. 17-20, 76-80; Churchill, *op. cit.*, vol. IV (London, 1927), pp. 298-302.

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views were substituted wherever possible.[25] "My aim throughout", said Mr. Lloyd George, "was to tone up this staff to a pitch of high endeavour by every appeal that moves men to do their best—by praise; by emulation; by fear of exposure to criticism; and above all, by the urge of a genuine spirit of patriotism." [26]

The Minister's stimulating personality was not restricted to those in his department. He was in constant touch with the manufacturing industries throughout the kingdom, urging them on and trying to make their activity fit in with the national effort. Labor troubles were another source of worry and a further drain on his vitality. He was continually called upon to patch up difficulties, to appeal for greater exertions and sacrifices, and to secure labor's consent to dilution and the arbitration of disputes.[27] Moreover, his struggle with the scandalous inefficiency and intransigence of the War Office, which had in large measure been the cause of the creation of the new department, continued long after its establishment, until at last the Minister was in complete possession of all stages and every kind of munitions production.[28] Few will question Mr. Lloyd George's statement that in all his busy life he never toiled harder than during this period of organizing the supply of munitions.[29]

The story of Mr. Lloyd George as a Cabinet Minister is a long one, and the part he played as Minister of Munitions is but one of the central chapters. The same general characteristics, however, appear throughout the narrative. His earlier portfolios were used as the instruments for accomplishing substantial and even drastic reforms,[30] and his administration at that time was marked by the same power of impressing his personality on his officials. The Chancellor the Exchequer, writes one of his civil servants, "woke us all up at the Treas-

[25] Lloyd George, *op. cit.*, vol. I, pp. 278-83.

[26] *Ibid.*, p. 282.

[27] *Ibid.*, pp. 283-322.

[28] *Ibid.*, vol. II, pp. 548-654.

[29] *Ibid.*, vol. I, p. 284.

[30] J. H. Edwards, *David Lloyd George* (New York, 1929), vol. I, pp. 287-311.

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ury; he worried us to death and trampled on our most sacred feelings; we often sympathized with Mrs. Lloyd George, who is reported, after exceptional provocation, to have said that the first time she saw her husband he was in the hands of the police and she sometimes wished she had left him there: but on the whole he did us good." [31] He had, in short, in Haldane's expressive phrase, "fire in his belly";[32] and although that fire was certainly not lit by the flames of war, there is no doubt but that the emergency provided the conditions best suited to his peculiar talents. As Minister of Munitions, Secretary for War and Prime Minister his resilient mind and his tireless energy were both the hope and despair of his associates: hope, because he could surmount obstacles and work miracles where others would have faltered; despair, because he lived too much for the moment, and at times his policies would waver and change, not from indecision, but from his over-elasticity of mind and his impatience for success. But his scorn of red tape and narrow views, his willingness to abandon minute control and give his subordinates their heads provided they were able to produce results, his amazing ability to make new adjustments, his unfaltering courage—these were enormous assets, and there were few people indeed who opposed Balfour's paternal demand for a "free hand for the Little Man." [33] Such qualities were excellent in times of peace, but they were of incalculable value in war—a very fortunate circumstance for the nation, and equally fortunate, no doubt, for Mr. Lloyd George.

* * * * *

Lord Curzon was a Minister with an entirely different background of political experience from either Lord Oxford or Mr. Lloyd George. He had a short but promising career as Under Secretary, an extremely brilliant seven years as Viceroy of India, and, after a long absence from official life, a distinguished record in various ministerial positions during the

[31] Guillemard, *Trivial Fond Records*, p. 36.

[32] Sir F. Maurice, *Haldane*, vol. II (London, 1938), p. 45.

[33] Dugdale, *op. cit.*, vol. II, pp. 241, 266.

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latter part of the War and the early twenties. His greatest achievements, beyond any doubt, were in India, and it is but fair to judge his success as an administrator primarily by his record during that period. Such a study, moreover, should present no incongruity when linked with his administrative experience in Great Britain; for his relationship to the Indian civil service resembled very closely that of a Minister in charge of a department at home. While he might easily have qualified as an expert on general Asiatic affairs, his approach to the majority of Indian problems was that of an intelligent amateur; the effect of the contact between his mind and those of the trained professional officials was the same as in Great Britain; his policy-forming function, his powers of initiative and reform, his ability to accept or disregard the counsel of his advisers—these may have had greater scope in India, but they were essentially of a piece with the British ministerial tradition. In short, the political functions of the Viceroy may have had little or no counterpart in a democratic government; but his administrative functions were in most respects identical with those which he was called upon to perform both before and after his sojourn in India.

The most bewildering characteristic of Lord Curzon was his complex personality. "He could be", wrote Lady Oxford, "both generous and mean, pompous and humourous, affectionate and lonely, vulgar and distinguished, friendly and proud";[34] and other writers have vied with one another in compiling lists of contradictory adjectives to describe his nature.[35] But on one thing all are agreed, that despite a number of amazingly petty faults, he was a man of uncommon ability and of genuine greatness. He combined a brilliant mind with unremitting industry, he had an extremely high sense of duty, and while he was constantly driven by a boundless ambition, he never allowed selfish ends to become his master.

[34] Margot Asquith, *More Memories* (London, 1933), p. 165.

[35] W. S. Churchill, *Great Contemporaries* (London, 1937), pp. 277-8. Lord Ronaldshay, *Life of Lord Curzon* (London, 1928), vol. III, pp. 384-7. J. D. Gregory, *On the Edge of Diplomacy* (London, 1929), pp. 250-1.

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Certain of these qualities had a direct and obvious effect on his relations with the civil service. He possessed, for example, a remarkable facility in both speech and writing, and he took great pleasure in rolling out resounding periods in public addresses and state documents.[36] To a fluent style he added a mordant humor; and this dangerous gift was accompanied by an irritability and an impatience with inefficiency that often led him to lash out at his subordinates without mercy. "Try and suffer fools more gladly," wrote the Secretary for India, "they constitute the majority of mankind. . . . Cases have come to my notice where persons have been deeply wounded and gone from you full of resentment in consequence of some incautious joke or verbal rebuke which they thought was harshly administered."[37] But such stern restraint was more than Curzon could bear; the temptation to apply the apt phrase would prove too great, and official ineptitude would again receive a castigation in the grand manner. He wrote:

> Government here has become very ponderous and slow. I am prodding up the animal with most vigorous and unexpected digs, and it gambols plaintively under the novel spur. Nothing has been done hitherto under six months. When I suggest six weeks, the attitude is one of pained surprise; if six days, one of pathetic protest; if six hours, one of stupefied resignation.[38]

Even the India Office itself was not immune to attack.

> Already it [a matter referred by him to London] has been delayed six months by the interminable niggling of C———.

[36] "The greater his difficulties the more fluently he faced them. His State papers were marked with rhetorical eloquence. Cogency was his mistress, and antithesis was his Muse. Burke and Macaulay seemed to glance over his shoulder, while secretary after secretary sank exhausted on the steps of his throne." Shane Leslie, *Studies in Sublime Failure* (London, 1932), p. 210. "There was an air of profuse magnificence in his diction. He lisped in Gibbon, for the Gibbon came. Had he spoken simply, it would have been affectation. Fine phrases were the natural outcome of his view of life." Lord D'Abernon, *An Ambassador of Peace* (London, 1929), vol. I, p. 48.

[37] Ronaldshay, *op. cit.*, vol. II, p. 415.

[38] *Ibid.*, p. 27.

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> He went on writing, writing, writing as he always does, disputatious but agile, clever but exasperating. . . . He is the regular old-fashioned official against any innovation, caring not one little damn for reform, and convinced that Government business should be conducted with all the forms and at the speed of a minuet.[39]

This pungent style did more than infuriate his officials and brighten his dispatches; it naturally tended to make him extremely critical of the way in which his assistants wrote and compiled their state papers. It was not at all uncommon for him to take a badly prepared document, review the whole subject himself, and produce an entirely new statement which he thought, and rightly thought, more adequate.[40] The sheer bulk of the government files enraged him; and even a few weeks in India sufficed to show him how the endless comments and comments upon comments hypnotized the civil servants and paralyzed decision. Less than a month after he landed at Bombay he wrote the Secretary for India:

> Your Despatch of August the 5th arrives. It goes to the Foreign Department. Thereupon clerk No. 1 paraphrases and comments upon it over 41 pages of print of his own composition, dealing solely with the Khyber suggestions in it. Then comes clerk No. 2 with 21 more pages upon clerk No. 1. Then we get to the region of Assistant Secretaries, Deputy Secretaries, and Secretaries. All these gentlemen state their worthless views at equal length. Finally we get to the top of the scale, and we find the Viceroy and the Military Member, with a proper regard for their dignity, expanding themselves over a proportionate space of print. Then these papers wander about from Department to Department, and amid the various Members of Council. Each has his say, and the result is a sort of literary Bedlam. I am grappling with this vile system in my own Department, but it has seated itself like the Old Man of the Sea upon the shoulders of the Indian Government, and every man accepts, while deploring, the burden.[41]

[39] *Ibid.*, p. 117.

[40] *Ibid.*, vol. I, pp. 175-8; vol. II, pp. 178-83.

[41] *Ibid.*, vol. II, pp. 26-7; *cf.* also pp. 62-5.

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The reform of the administration was one of the dozen or so major measures which Curzon planned during his early months in India, and because of its fundamental nature, it became one of the first to be carried out. It involved, among other things, a tightening in the civil control over military expenditures, a drastic reduction in the physical bulk of the government files and reports, a more extensive resort to personal consultation with a less formal use of documents, and the application of uniform rules designed to cut red tape and speed up administrative processes.[42] Every branch of the service, he declared, was to be placed "upon the anvil, to test its efficiency and durability, and, if possible, do something for its improvement."[43] The effects of these measures were highly beneficial, and so long as Curzon remained Viceroy the improvements were for the most part retained, but less energetic successors were apparently unable to stop the paralysis creeping in once more.[44]

Lord Curzon and Mr. Lloyd George had at least one quality in common: each was capable of prodigious effort and was able by force of example to transmit some of his fierce energy and enthusiasm to subordinates. Every official knew that "however hard he worked, the Viceroy was working harder"; and although the latter was frequently confined to his bed for days at a time, the output of work was apt to increase rather than diminish on these occasions.[45] He threw his forceful and

[42] *Ibid.*, pp. 51-66. Lovat Fraser, *India under Curzon and After* (London, 1911), pp. 242-62.

[43] Fraser, *op. cit.*, p. 242.

[44] In 1903 Lord Curzon announced that 300 obligatory reports had been abolished, and the number of pages of the remaining reports had been reduced from 18,000 to 8,600 and the statistics cut from 17,400 to 11,300 pages. When he came to India the government was spending £470,000 a year on printing and stationery. This amount increased slightly during his incumbency, but three years after his departure it had jumped to £786,000 annually. *Ibid.*, p. 251. A more recent example of the maze of Indian army administration was brought to light by the Report of the Mesopotamia campaign. *Cf.* Lloyd George, *op. cit.*, vol. II, pp. 802-31; Report of Mesopotamia Commission, *Parl. Pap.* (*Great Britain*), 1917, Cd. 8610.

[45] Fraser, *op. cit.*, pp. 25-6. Ronaldshay, *op. cit.*, vol. II, p. 116.

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dominating personality into whatever he attempted, and only a methodical efficiency carried to a high level enabled him to bear the enormous load which he voluntarily and eagerly assumed. As Foreign Secretary he was no less industrious, and he usually sat up until two or three in the morning reading the numerous dispatches and reports that continually demanded his attention.

Unlike Mr. Lloyd George, Curzon had an ingrained love of detail and almost an unlimited capacity to absorb it. The Viceroy's outlook reached to the boundaries of India and beyond into Afghanistan and Tibet, but he never lost sight of his immediate surroundings nor forgot the existence of minor problems in a remote province. He could stop at Agra in the midst of an exhausting trip to arrange about the planting of cypresses in the garden of the Taj Mahal; he was able to draw up with his own hand a comprehensive statement on the extremely technical subject of Indian land assessment which stood the test of time for over twenty-five years; he enjoyed making the elaborate arrangements for the Durbar down to the last minute particular of deciding upon "the width of a road, the pattern of a carving, the color of a plaster, the planting of a flower bed, the decoration of a pole."[46]

In keeping with this enormous industry and his passion for detail was Curzon's complete unwillingness, if not inability, to delegate powers to subordinates. He never ceased to dwell upon and illustrate the truth of his dictum that "if you want a thing well done you must be able to do it yourself; in fact, you must do it yourself", and he invariably acted in accordance with his belief.[47] Consequently when he began his long series of reforms in India, he was compelled to master a prodigious quantity of material before he was in a position to pass upon the multitude of questions which pressed for decision. No paper that he could write was entrusted to another pen; no problems that he could solve were sent down for a subordinate's

[46] Ronaldshay, *op. cit.*, vol. II, pp. 130, 180-3, 229.

[47] Sir Ian Malcolm, "Lord Curzon of Kedleston", *The Post Victorians* (London, 1933), p. 134. Ronaldshay, *op. cit.*, vol. II, pp. 178-84; vol. III, pp. 148-50.

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action. The hand of the master was everywhere; and when at a later date he became a Minister in England, the same principle was applied to his administration there as well. It is usually thought that if only the task is big enough, the man in charge will be forced by the sheer weight of labor to delegate powers to his assistants; yet this giant seemed to draw strength from his burdens and even challenge his officials to throw a greater load on his shoulders. On one occasion, for instance, when he was considering the possibility of altering a number of provincial boundaries and particularly the partition of Bengal, he discovered that the same question had been the subject of long discussion among the civil servants without its being brought to his attention. Such neglect of the Viceroy was unpardonable; and the rebuke which Curzon thereupon administered to his staff has become a classic statement on the evils of departmentalism as well as furnishing one of the best examples of Curzon's unrivaled powers of expression.

> I really feel disposed to ask: Is there no such thing as a head of the Government, and what are secretaries for but to keep him acquainted with the administration? Would it be considered credible, outside the departments, that these really very important issues, affecting the constitution of or dismemberment of provinces, should have been under discussion for more than a year without the file ever being sent or the subject ever being mentioned to the Viceroy! They are all matters in which I take a great interest, in which I should be unfit to be the head of the Government if I did not take such an interest, and which I have frequently discussed with Lieutenant-Governors and Chief Commissioners. Meanwhile, the departments, without a word to me, are also discussing it among themselves. Even the Finance Member had an opportunity of recording his opinion upon the manner in which India ought to be parcelled out; and, finally, at the end, a cut-and-dried reply is submitted to the Viceroy as though his signature were a sort of obligatory but perfunctory postscript to the entire discussion.
>
> I do not suppose for one moment that this has been a conscious omission, or that there has been in anybody's mind the faintest idea of conducting the discussion except according to the most orthodox methods. But that is just where my complaint

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comes in. People sometimes ask what departmentalism is. To any such I give this case as an illustration. Departmentalism is not a moral delinquency. It is an intellectual hiatus — the complete absence of thought or apprehension of anything outside the purely departmental aspects of the matter under discussion. For fourteen months it never occurred to a single human being in the departments to mention the matter, or to suggest that it should be mentioned. Round and round like the diurnal revolution of the earth went the file, stately, solemn, sure, and slow; and now, in due season, it has completed its orbit, and I am invited to register the concluding stage.

How can I bring home to those who are responsible the gravity of the blunder or the absurdity of the situation? [48]

Lord Curzon's relations with his official subordinates are difficult to describe, for they were completely wrapped up with his incalculable personality. He could be unbelievably rude, overbearing, exacting and capricious; but he was also capable of humor, kindliness and great consideration for those who worked for him. There are well-authenticated stories describing the childlike petulance which he frequently exhibited,[49] for his irritability over trifles was so excessive that it approached the incredible. This trait became more common as he grew older; and while it was due in part to a curvature of the spine which became increasingly painful with the years, it sprang also from an impatient nature combined with a brusqueness toward inferiors which verged on insolence.[50]

[48] Fraser, *India under Curzon and After*, pp. 378-9.

[49] Gregory, *On the Edge of Diplomacy*, pp. 245-55. H. Nicolson, *Curzon: The Last Phase* (London, 1934), pp. 44-8.

[50] "'Yes,' said Lord Curzon, 'it is a very odd thing. I am not, perhaps, a profoundly religious man, yet I say my prayers. Every morning, among my other prayers, when I kneel down, I formulate the following phrase: "Please God, may I not be rude or unkind during the course of this coming day to any man or woman." In the evening when I retire to bed, I go back upon my day and examine whether that prayer has been vouchsafed. Would you believe it, my dear fellow—it is seldom vouchsafed! I always find that I have been very rude, and very often rude, during the day, to many men—and alas, even to a few women! It is very strange!' He took a gulp at his brandy and soda. 'Very strange,' he repeated, 'indeed'." Nicolson, *op. cit.*, pp. 322-3.

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Lord Oxford reported that in 1923 the Foreign Office were delighted to be "relieved of the incubus of the 'Archduke Curzon'," [51] and Haldane noted that the Foreign Secretary "has a way of treating his officials as if they were serfs." [52] Yet many of his civil servants admired him enormously; while a few with a broader tolerance gave him not only respect but affection and understanding.[53]

Curzon's self-esteem, ability and impatience with inefficiency forced him always to seek the top position and also to insist that he be kept in intimate touch with everything under his jurisdiction. This "middle class method", as he called it with a defiant pride, was the only way he could do his work; and while his hands might be unusually grasping, he could justly plead that they were at the same time magnificently capable. "Curzon was from the outset equipped with many supreme qualities. He possessed a superb memory, an unequalled power of assimilation, great intellectual curiosity, a genius for lucid exposition, abundant humour, and oratorical capacity of a high order. His will power, though intermittent, was often tense; his energy superhuman; his industry redoubtable." [54] He developed a deliberate and thorough technique of administration, and while he would press his measures ruthlessly, they were invariably well planned and solidly rooted in a mass of facts which had been carefully prepared and studied in advance.[55] To all these high qualities, he added courage, integrity, a fine conception of public service, and a strong sense of justice. His reforms in India and his notable diplomatic successes of later years bear convincing

[51] Oxford and Asquith, *Memories and Reflections*, vol. II, p. 252.

[52] Maurice, *Haldane*, vol. II, p. 152.

[53] Gregory, *op. cit.*, pp. 251-4.

[54] Nicolson, *op. cit.*, p. 17.

[55] "Oh those Curzonian dissertations!" exclaimed Harold Nicolson in mingled despair and admiration. "As if some stately procession proceeding orderly through *Arcs de triomphe* along a straight wide avenue: outriders, escorts, bands; the perfection of accoutrements, the precise marshalling of detail, the sense of conscious continuity, the sense of absolute control." Quoted in Leslie, *Studies in Sublime Failure*, p. 242; *cf.* Ronaldshay, *Life of Lord Curzon*, vol. II, p. 417.

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witness to both the authenticity of Curzon's talent and the practicability of his methods.

* * * * *

Three swallows of even the finest plumage do not make a summer, although they may form an encouraging portent of the coming season. Nor, perhaps, should much more importance be attached to the experience of three of the most distinguished Cabinet Ministers; they form an interesting study, and indicate in a general way how cabinet government may be linked up with sound and efficient administration. Any statements of a more particular nature must be few in number and admittedly both cautious and tentative, continually bearing in mind the restricted area of the field of study and the unusual competence of the Ministers under discussion.

Asquith, Lloyd George and Curzon, while differing from one another in many ways, all followed the British cabinet tradition in the qualities they brought to their respective posts. Although they were amateurs and generally unable to compete with their officials in technical expertness, each was nevertheless an expert in another sense: he was a skilled administrator who was fully competent to run a department well. The Cabinet Minister, if he is to perform his functions adequately, needs a varied rather than a specialized equipment; he should possess such qualities as a discriminating judgment, a knowledge of men, sound common sense, an ability to make decisions, a willingness to work exceptionally hard, and an understanding of organization. Most of these a Minister is likely to have in fair measure at the time of his appointment, for the hard proving-ground of the House of Commons develops and trains its members along precisely these lines, and there is a reasonable assurance that only the best of the survivors will be given portfolios.[56] The lack of any technical or narrow skill on the part of the Minister makes him unusually adaptable, and he is consequently able to move from department to department with comparative ease and, as a rule, little loss in efficiency. This adaptability may be, of course, easily

[56] *Cf.* Laski, *Parliamentary Government in England*, pp. 242-5, 289-92.

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overstressed; for no Minister's talents are so catholic that they will not be better suited to some departments than to others. Mr. Lloyd George, for example, chose the Presidency of the Board of Trade in preference to the more remunerative Postmaster-Generalship, because the latter "offered him neither scope for initiative nor a challenge to enterprise," both of which he hoped to find—and did find—at the Board of Trade.[57] Asquith as Home Secretary and Prime Minister, Lloyd George as Minister of Munitions and war Prime Minister, Curzon as Foreign Secretary, are further examples of the same happy result obtained by matching personal traits to a congenial office.[58]

One special quality which no Minister can afford to lack if he is to serve as a useful corrective influence in dealing with his officials is an acute sense of proportion.[59] This will find its most obvious opportunity when the department's procedure has become over-elaborate, and formalism and red tape have gone to such lengths that the means have begun to obscure the ends. It is doubtful if a Minister can ever be too antagonistic to evils of this kind, nor can his attacks on their entrenchments be conducted too vigorously. The tendency toward formalism is unceasing, the whole weight of the civil service is constantly being brought to bear in its defense, and the collapse of one outpost is too often followed by the immediate erection of others.

Many administrators, however, may not be willing to rest content with a mere impatience of red tape and an intolerance toward all pettifogging practices. The best of them are likely to be much more aggressive, and many will be found who derive a genuine delight in smashing traditional methods which can be no longer justified or excused. Instead of regarding the task as a disagreeable duty, they welcome it as an adventure; they become knights errant attacking the bu-

[57] Edwards, *David Lloyd George*, vol. I, p. 286.

[58] *Cf. supra*, p. 351.

[59] One of Curzon's biographers points out that he lacked this sense in certain respects, notably in his excessive attention to detail. Nicolson, *op. cit.*, pp. 17-20.

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reaucratic dragons which prey upon the beleaguered castles of efficiency. Asquith, it is true, had none of this zest for battle, although he showed no sympathy for red tape and outworn ideas if, on balance, the evidence were against them. Mr. Lloyd George, on the other hand, instinctively disliked the official attitude of mind and he was always eager to oppose its complacency, its stupidity and its obscurantism. He was a born iconoclast, and he discovered enough cherished images in Whitehall to satisfy even his destructive impulses. Curzon was endowed with much the same fervor and initial hostility to departmentalism. He was always on the alert for abuses; and his bitter eloquence against them sprang partly from a conviction that they were intolerable and partly because he loved the disputation his attack inevitably produced. "I remember", he said, "settling a case that had been pursuing the even tenor of its way without, as far as I could ascertain, exciting the surprise or ruffling the temper of an individual for sixty-one years. I drove my pen like a stiletto into its bosom. I buried it with exaltation, and I almost danced upon the grave." [60] It takes little effort to imagine the same words being spoken by Mr. Lloyd George with the same fine vehemence and elation.

The different scale of values which the Minister brings to administration does more than help preserve its efficiency in the narrow sense, it also compels the officials to regard their work from another point of view. The first consideration of the civil servant is not unnaturally the ability of the department to do its work properly; the first consideration of the Minister is to try to reconcile the public need with what his officials advise. The Minister may thus be caught between two fires. He wishes to maintain the efficiency of his department, yet at the same time there may be other and sometimes conflicting claims which he is bound always to consider and frequently to prefer to the narrower departmental interests. What may be the most effective is frequently not the most economical; what is thorough and logical may not in the long

[60] Fraser, *India under Curzon and After*, pp. 256-7.

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run be as wise as that which is tentative and half-hearted; what is administratively efficient may arouse so much hostility that it becomes a virtual failure. It is the Minister's extremely difficult task to balance impalpable alternatives of this kind. Both Asquith and Lloyd George were by their long parliamentary training much more sensitive to such political influences than Curzon, and they were consequently more disposed to make concessions or demand readjustments on those grounds. Curzon was never a politician, and he used Parliament only as the necessary avenue to power. He had few democratic convictions, little sense of cabinet coöperation, and no love or ability for domestic politics and party maneuvers. He wished to be the master of his own quarter-deck, and he disliked making compromises and giving in to other people whose views were not likely to be as enlightened as his own.[61] His conviction that a certain policy was inherently the best or administratively the most desirable would thus obscure the fact that it was politically inexpedient—the bureaucrat would for a time overshadow the Minister. Nothing, for example, was able to deter him while he was Viceroy from proceeding with his scheme for the partition of Bengal.[62] He felt that it was a progressive measure and would confer great benefits on the province, and he proceeded to carry out the project with an almost complete indifference to the popular clamor which the proposals aroused. The result was one of the few failures of his administration in India.

Each of the three Ministers discussed above used his own individual method in dealing with subordinates and exerting his influence on the work of the department. Mr. Lloyd George, said Lord Derby, "has a flair for spotting what is wrong and suggesting a remedy; but he never thinks out the details or attempts to put his scheme into operation."[63] His plan was simple and effective: he chose men with initiative and resource, told them what was to be done, and then gave them

[61] Nicolson, *op. cit.*, pp. 7-8, 18-9, 32-3.

[62] Ronaldshay, *op. cit.*, vol. II, pp. 320-9.

[63] *Lord Riddell's War Diary* (London, 1933), p. 294.

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a free hand and complete responsibility. "Get on with it" was his favorite phrase; and he was quite content to allow his subordinates to make and work out their own schemes and bring him the results which he had broadly outlined. His mental agility and his amazing faculty for seeing things as a whole led him, however, to overlook many obstacles and to be impatient with those whose vision, while more limited, could nevertheless appreciate better the nature of the difficulties involved. He was thus apt to make exorbitant demands on his officials, and they, stimulated by the outrageous character of the request, were driven to attempt the impossible, and at times miraculously succeeded in achieving it. The same elasticity of mind also made him restless under failure or delay and too much inclined to alter policies before they had been given a fair trial. But here again the value of this characteristic far exceeded its disadvantages; for he was rarely disposed to throw good money after bad, and he would abandon any unsuccessful policy with few regrets and at once initiate a new one which gave promise of greater success.

The procedure used by Lloyd George formed a striking contrast to that of the more equable statesman whom he succeeded. Asquith was a skilful strategist who won his victories through painstaking preparation, a willingness to abide his time, and a strong disinclination to hurry events. He took his facts as he found them, recognized the significance of each element in his problem, carefully consulted his expert advisers, and then threw his weight on one side or the other at the decisive moment. He made, as a result, few mistakes, but it was an uninspired course following along well-worn ways. Mr. Lloyd George, on the other hand, was essentially an opportunist, who had, indeed, few fixed principles, but an infinite capacity for adapting himself to circumstances. Every difficulty was a fresh challenge to his ingenuity and exertions, and each disappointment merely caused him to draw afresh from his inexhaustible reserves. He never possessed Asquith's command over his material, he seemed to act frequently on intuition, and he made mistakes; but his powers of recovery

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and readjustment were phenomenal, and he scored many brilliant successes. His hospitality to new ideas repeatedly led him outside his department in a search for information which his regular advisers were unable to supply, and he himself states that he obtained a great many valuable suggestions in this manner.[64] The method was naturally not popular with his officials, and it might not have been used by one who was greatly concerned with the niceties of departmental etiquette, but the results of the practice proved it to be of enormous advantage.

Curzon resembled Asquith rather than Lloyd George in his general technique, although in many ways he differed from both. He mastered his problem detail by detail, he prepared his defenses and organized his attack, and, when ready, launched his program. But he was always willing to force the issue, and he had little of Asquith's patience or readiness to compromise. He stood midway betwen the two others in his use of written material, for while he did an enormous amount of his work by means of files and memoranda, he had no distaste for oral methods. Mr. Lloyd George, however, disliked intensely the labor of reading long papers or complicated reports. He was an adept at unearthing information by asking questions, and he invariably preferred to obtain his data by conversational short cuts. Asquith, on the other hand, had a pronounced antipathy for interviews of all kinds, and he avoided this method as much as Lloyd George avoided the other.[65]

Curzon was, of course, the antithesis of Lloyd George in his reluctance to delegate any power or responsibility. Each had a flair for organization; but the one built it about himself as the source of all energy and direction, while the other was content to make his immediate contribution only when the circumstances were so urgent that his special intervention became

[64] Lloyd George, *op. cit.*, vol. III (London, 1934), pp. 1172-4. The great difficulty was to obtain military advice which was genuinely independent of that offered through the Commander-in-Chief or other official sources. *Ibid.*, vol. IV (London, 1934), pp. 2270-2, 2357-78. Churchill, *The World Crisis*, vol. IV, pp. 384-93. The French government had the same experience; *cf.* E. L. Spears, *Prelude to Victory* (London, 1939), pp. 333-83.

[65] Lord D'Abernon, *An Ambassador of Peace*, vol. II, pp. 32-3.

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imperative. Curzon's methods and painstaking industry undoubtedly had a bureaucratic taint; but he protected himself by his imagination and breadth of vision, and there were times when his ordered control of detail seemed closely allied to genius. But his passion for keeping a careful watch on every activity constituted a serious fault, for it made his administration unduly dependent on its head. Too much of his work was linked up with his own powerful personality, and when, in due course, he gave way to a successor of more usual talents, the whole elaborate mechanism was affected in every part.

It is therefore obvious that the capable Cabinet Minister brings to his office more than administrative ability of a general nature; he adds also talents which are peculiarly his own and which are used to draw out and inspire his permanent officials. For his relationship to his staff is essentially a delicate and personal one, and it calls for something other than the mere application of formal rules of administration. The methods used by the Minister will of necessity be the outcome of his own temperament and personality, and his technique is bound to differ in many ways from that used by any of his colleagues. It is an individual contribution wrapped up with and inseparable from himself. Each Minister will naturally rely on those qualities of mind and character which have already served him well and to which in large measure he owes his existing high position. The judicial Asquith will bring exceptional care and discriminating judgment to his administrative problems; the impulsive Lloyd George will approach his task with his well-known vigor and imagination; the bureaucratic Curzon will direct every detail with a painstaking thoroughness which has become his second nature. Each will affect his civil servants in an equally characteristic fashion: an Asquith by a calm confidence in their ability and coöperation, a Lloyd George by fair words and an appeal to their resourcefulness, a Curzon by scathing rebuke and personal example. Yet the general psychological effect may be much the same in all these cases. The civil servant will be given a stimulus and a new point of view; he will be brought into immediate and frequent contact with a mind quite different from his own in training,

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outlook and experience, yet one which is by no means inferior in either shrewdness or capacity.

The effectiveness of these appeals will be sustained largely by force of character and personality. The colorless administrator will prove to be an automaton or a mediocrity: to excel, the Minister must possess unique endowments or have some common qualities developed to an uncommon degree. He must impress his department with himself and, above all, with his ability and sincerity of purpose. He should know, at least in a general way, what he wishes to accomplish, and he must create among his officials a feeling of confidence in his capacity to carry out his purpose. To these characteristics many Ministers of first rank will add at least one other, that of idealism —a lofty conception of public duty, an unselfish devotion to a cause, the conviction that all members of the department are engaged in one fine common endeavor. It was this high quality that redeemed in full measure Curzon's many faults, and enabled him to command the reluctant respect and utmost efforts of those who served under him. It was this idea of public service that formed the theme of his address on the eve of his departure from India.

> Let it be our ideal to fight for the right, to abhor the imperfect, the unjust or the mean, to swerve neither to the right hand, nor to the left, to care nothing for flattery or applause or odium or abuse—it is so easy to have any of them in India—never to let your enthusiasm be soured or your courage grow dim, but to remember that the Almighty has placed your hand on the greatest of his ploughs, in whose furrow the nations of the future are germinating and taking shape, to drive the blade a little forward in your time, and to feel that somewhere among these millions you have left a little justice or happiness or prosperity, a sense of manliness or moral dignity, a spring of patriotism, a dawn of intellectual enlightenment or a stirring of duty where it did not exist before—that is enough, that is the Englishman's justification in India. It is good enough for his watchword while he is here, for his epitaph when he is gone. I have worked for no other aim. Let India be my judge.[66]

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[66] Ronaldshay, *Life of Lord Curzon*, vol. II, p. 424.

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ADOLF WAGNER: FROM NATIONAL ECONOMIST TO NATIONAL SOCIALIST

LORD LOTHIAN'S dictum that Hitlerism is the child of Bolshevism out of economic nationalism is both pertinent and suggestive if applied to the evolution of the thought of Adolf Wagner, the well-known Bismarckian economist who was honored in 1935, on the centennial anniversary of his birth, as one of the fathers of Nazism. Wagner was one of the chief exponents of the doctrines of national economics stemming from Adam Müller and List; he was also a radical state socialist who attempted to make over Marxian socialism into a "German socialism". The result was a national socialism characterized by an intolerant nationalism, anti-Semitism, militarism, organicism, and romantic cult of the soil, strikingly similar to present-day doctrines in Germany.

There is no necessity for the historian to take up the metaphysical and psychological discussion as to the essential nature of Nazism and the sincerity of its ideology, although certainly these problems are challenging. However, the chief problem is how Hitlerism got into power, and it would be hard to dispute that the preachings of the party, whether sincere or not, could never have succeeded in winning approval unless a significant number of Germans had already been accustomed to responding to such doctrines as totalitarian nationalism, organicism, dynamism, anti-Semitism, anti-capitalism, anti-intellectualism, anti-individualism and anti-liberalism. These doctrines had already formed a well-established German tradition, in constant conflict throughout the nineteenth century with the other, the liberal, tradition in German thought.[1]

[1] Of the numerous treatments of this conflict of the two traditions in German thought, one of the most interesting, because written by a German who sympathized with both, is by Ernst Troeltsch, "Ideas of Natural Law and Humanity", translated by Ernest Barker in the appendix to his edition of Otto

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Certainly there is no doubt in the minds of historians that all the elements of contemporary National Socialism were already in existence during the nineteenth century and that the forerunners of the present totalitarianism were playing an increasingly important rôle on the German stage before the Great War.[2] The career of Adolf Wagner—coming to maturity as he did just at the critical turning point of modern German history, the ascendency of Bismarck—exemplifies the evolution of nationalism and of socialism in nineteenth-century Germany. His thought shows the triumph of the realistic, intolerant nationalism of the Bismarckian era over the earlier types of romantic and liberal nationalism, and the evolution of this realistic nationalism into a sort of neo-romantic nationalism composed of pan-Germanism, racialism, anti-intellectual activism, pseudo-Nietzschean heroics and imperialist geopolitics.

Wagner's nationalism up to 1870 is largely a political nationalism, since he was primarily concerned with glorifying the supremely patriotic services of the Hohenzollern dynasty to Germany and the "Prussian mission" to unify Germany by "blood and iron". Germany was to him only a synonym for Prussia, and nationalism meant the triumph of Prussianism, since he grew up in the era after the defeat of liberal and democratic nationalism at the Frankfurt Parliament, and his student days and early manhood coincided with the growing power of Bismarck. This earlier nationalism of Wagner itself goes through an evolution from a romantic cultural insistence on the sacredness of the nationality principle for Germans, yet a denial of this to inferior non-Germans, to a doctrine of national interest and *Realpolitik,* and this in turn forms the transition to the economic emphasis of the integral or totalitarian nationalism preached by him after 1870. The cultural nationalism he expresses is completely intolerant and insists

Gierke, *Natural Law and the Theory of Society* (Cambridge, England, 1934), vol. 1.

[2] *Cf.* for example C. J. H. Hayes, *Historical Evolution of Modern Nationalism* (New York, 1931); L. L. Snyder, *From Bismarck to Hitler: The Background of Modern German Nationalism* (Williamsport, Pa., 1935).

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upon the forcible Germanization of inferior cultures. Only the German culture is sacred and has a mission to assert its national superiority, especially as against the Poles, Czechs, Danes and French. The transition from this to the imperialism of social Darwinism and *Machtpolitik* was not difficult.

Wagner's contribution to the development of nationalistic thought in Germany was dictated by the evolution of Germany itself and the change in the type of problems which the German nation had to meet after its unification. Among these we might name the rapid industrialization of Germany, the spread of railroads, the phenomenal growth in population accompanied by rural emigration and depopulation in the last three decades of the century, the decreasing birth rate in the decade before the Great War and the consequent Slavic immigration of rural laborers, the increasing financial problems of the Empire resulting from the ambitious military, naval and colonial policies, the rise of social unrest with its threat to traditional social relations, and the increasing impact of world economic movements on Germany's internal affairs. All these determined that the dominantly romantic, cultural and political aspects of the nationalism of his youth, and of the youth of Germany during its period of unification, should cease to be of primary importance during the period of his maturity, which coincided with that of the German Empire, and that the economic aspects of nationalism should then take precedence in his thoughts, with the consequence that he became largely concerned with economic and "realistic" solutions to these national problems.

The State to him is the primary interest of the community and its essential characteristic is power. It is coercive military power. *Kriegsmacht* is "the first and most important of all national, and I may add, of all economic necessities." Therefore the State's capacity to exert this power, its fighting capacity, must take precedence over everything else, since this determines the survival or death of the national organism. This power depends on self-sufficiency in production, on the supply of man power, on national morale, on the strategic lay-out and control of its transportation, on the size of its

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military establishments and its merchant marine, and on the increase in national wealth and its availability to the State.

Wagner's policies, which were designed to bring about this end of national power and potential warlike capacity and to be used primarily for security under Bismarck and for expansion under William II, may be summarized under the following heads: (1) Fiscal, (2) Juridical, (3) Agrarian, (4) Christian Socialistic and anti-Semitic, (5) Pan-Germanic, (6) State Socialistic. Thus it was that Wagner was praised during the Great War by German economists like Tillmann and Tönnies as a great *Vaterlandsfreund* and as one who had done more than any other economist to prepare the German economic system for the War.

Wagner's nationalism so clearly mirrors the interests and preoccupations of his day that it might merit study for that reason alone, but while in some aspects his thought only parallels or reflects that of other nationalistic thinkers and writers, in the economic aspects of nationalism he is clearly a leader. During the life of the German Empire, from 1870 to his death in 1917, he occupied one of the highest positions in the German academic world, at the University of Berlin, and in this position he inculcated thousands of future members of the German army, navy, bureaucracy and educated classes with these doctrines. Moreover he played an important political rôle: as economic adviser to Bismarck, as deputy to the Prussian Landtag 1882-85, as leader of the Christian Social Party and of the Evangelical Social Congress, as member of the Prussian House of Lords from 1910 to 1917. Both at home and abroad he was regarded as the chief exponent of the system of state socialism characteristic of the German Empire.

Wagner differs from Treitschke, and even from some of his economist contemporaries, in that he is an extreme nationalist almost from the beginning of his career. Since he was born in 1835 and was only a child growing up in Göttingen during the period of the liberalism of the forties,[8] he was never seduced

[8] But a Göttingen severely purged of its liberalism in 1837 by the expulsion of its leading liberals.

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by what he later called the alien influence of political liberalism, as Treitschke was, and only very briefly, by the moderate economic liberalism of his professors, Hermann and Rau. He speaks of his conversion on the road to Damascus, that is, from economic liberalism and internationalism to economic nationalism, as having taken place in 1864 at the Economic Congress, when some orthodox opponent of paper money inflation exclaimed, "Better let the State perish than sound currency!" His revulsion and shock revealed to him his future path. Henceforward, his economic doctrine consciously attached itself to the organicistic, anti-individualistic nationalism of Fichte, Hegel, Adam Müller, Rodbertus, Lorenz Stein and Schaeffle, and to the Prussianism of Stein, Treitschke and Bismarck.

It is highly probable that the influence of his father, to whom he was very devoted, contributed largely to the choice of this line of German thought. His father, Rudolf Wagner, a famous professor of biology at Göttingen, continued the tradition of Schelling's *Naturphilosophie* and his nationalistic pietism. He was a nationalist of the conservative authoritarian type, a partisan of the reactionary ruler Ernst August of Hanover, who was the villain of the drama of the "Seven Göttingen Professors" and a consistent opponent of liberalism.

Like a large number of academic men in Germany, Adolf Wagner was swept into a frenzy of nationalistic fervor by the events of 1864, 1866 and 1870. His transfer in 1864 to the University of Dorpat in Russia, "the most German of all universities", although in the Baltic lands lost to Germany, led to his first nationalistic writing, "Die Entwicklung der Europäischen Staatsterritorien und das Nationalitätsprincip", a series of four long articles in Treitschke's *Preussische Jahrbücher,* during the years 1867-68. From his association with the extreme border nationalists he became interested in the speculation about the nature of nationality and national feeling; he took over their insistence on the supreme importance of maintaining and spreading one's own national speech and destroying the national speech of the enemy nation by means of German schools, a German press, subsidies and other eco-

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nomic aid to the farmers. He took over, too, their insistence that national honor is involved and that this is a test of national survival value. From Treitschke and the whole "climate of opinion" of *Machtpolitik* and social Darwinism, as expressed in the writings of Rochau, Sybel, Droysen and Schaeffle, appearing in the fifties and sixties, he appropriated the belief in forcible assertion of national superiority. The nation must assert its right over all individuals within it and prove its right to existence among other nations by a war of all against all in which only the stronger survives. Like Treitschke and Droysen, he accepted unreservedly the idea of the "Prussian mission", the Hohenzollerns' claim to possess a monopoly of *Deutschtum,* and the belief that a truly united German nation can be formed only by a forcible incorporation of all the smaller states into this Prussian monopoly. "What Prussia wins is won for Germany." [4]

In romantic fashion, Wagner accepts Herder's and Schlegel's criterion of language and race and asserts the sacred right of nationality—yet justifies German destruction of the independence and very existence of weaker nationalities by conquest, annexation and Germanization. His grandiose plan [5] for a *Mitteleuropa* and an *Osteuropa* dominated by Germany. and Russia, respectively, reveals the contradiction very clearly. These are to be German and Russian "national states". The Baltic and the Balkan states are such small or inferior nationalities that they must inevitably surrender any claims to independence and endure a foreign domination. Obviously German *Kultur* is especially destined to perform this task, the *Kulturkampf* of *Deutschtum* against Czechs, Poles and such. The romantic nationalism of Herder has been transformed by its fusion with social Darwinism into an intolerant imperialistic nationalism which claims that small nations are always doomed to extinction and that, among the great Powers, that nation is greatest which is most warlike and expansive.

[4] *Preussische Jahrbücher* XXI (1868), 379-402.

[5] *Preuss. Jahrb.* XX (1867), 1-42; XXI (1868), 401.

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The Austrian War of 1866 worked with his sojourn among the border nationalists and the influence of the Prussianists to complete his swing over to a wholehearted acceptance of the illiberal and forceful methods of Bismarck's consolidation of German unity. He heaps sarcasm on the "most learned German political and legal historians" who are "preoccupied with the thousand rights of the German estates and lands but have lost the feeling for the right of the German *nation* to a State in which one can live and breathe, move and serve." [6]

Wagner's unsparing criticism is, of course, directed, not only against German Particularists at home, but against the *Grossdeutsche* in Austria who had claimed for themselves the leadership of the German people. It is not Austria but Prussia that is the crystallizing nucleus of the German Empire, and the proof of this is the success of Prussia's arms. "The day of reckoning" of Königgratz has convinced even the blindest and most malicious "which of the two rivals for the *Ostmark* of the Old Empire" is the kernel of the German nation. "After more than half a thousand years of divided empire there has again arisen a mighty, true German State" which is that of Brandenburg-Prussia.[7] This "National State of the Germans" alone will be able to carry on further the "Eastern Mission" of Germanizing the Poles.

Like nearly all the rest of the German academic world, Wagner was seized with nationalistic delirium when the Franco-Prussian war broke out in July 1870. He had just been called to the University of Berlin on June 1, 1870 but found time during the hysterical triumph of those late summer days to write a pamphlet called *Alsace-Lorraine and Its Recovery for Germany,* which was so extreme, especially in its denial of the rights of neutral states, that even Treitschke was concerned lest its chauvinism disturb the other European Powers. Yet the whole pamphlet seems suspiciously like a plagiarism of Treitschke's own inflammatory pamphlet, written the month before, *What Do We Demand from France?* The

[6] *Ibid.* XIX (1867), 542.

[7] *Ibid.*, 540-1.

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abuse heaped on France, the excessive demands, the suspicion and bitterness directed at Austria and Bavaria are no more than Treitschke's. The disturbing and remarkable ingredient added to this rehash was a threatening and reckless pan-Germanism claiming the right to conquer the renegade Germans, i.e., the Dutch, the Flemish and the Swiss, and thus to form a great Teutonic Empire on the basis that these lost Germans were to be brought back to Germany exactly as Alsace-Lorraine should be. The war of 1870 marked a development in nationalist thinking of Germans like Treitschke, Wagner, and, in fact, perhaps the majority of German professors. Before that time the emphasis had been on the unification of Germany, but the conquest of France turned them to the consideration of how to win Germany's place in world politics.

The old preoccupation with the unification of Germany is still present, of course, and almost every page of the pamphlet is adorned with mockery, triumph and warning directed at the German Particularists, the Austrians, the South Germans, the Ultramontanists, the Liberals, the cosmopolitans, the humanitarians and the pacifists. All who opposed Prussia's triumphant march to power, or even asked for mercy for its victims, were traitors. This is the day of the apotheosis of the *Machtpolitik*, but, of course, clothed in the mantle of righteousness. This is a holy war, a war for the liberation of the world from the French race. It is a war to restore the sacred right of nationality to the German Alsatians—even if they deny any desire for the gift. It is also a war to uphold national honor —and incidentally national interests—to gain the coal and iron mines of Alsace and Lorraine, and to gain better boundaries and other economic and military advantages. But chiefly it is a war to prove the superiority of German culture over French civilization and of the German language, race, State, morals and army over the false French claim to be the " most civilized nation ", the best fighters.

Another note familiar to us in the decade of the 1930's is sounded in the bitter attacks on France as the hereditary enemy which is at one and the same moment both the brutal oppressor of Germany, the greedy would-be conqueror of Europe, the

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menace to Germany's security, the spoiled child of Nature and History because of her unified and protected geographical situation and early-won national unity, and yet, with an inconsistency familiar to us in the current German, Italian and Japanese press, the decadent state which is now completely on the decline, defeated in the struggle for existence as Holland and Carthage have been, a weak fickle braggart that deserves only contempt.

The real reason for the French enmity toward Germany is the just fear of losing in the struggle for existence—this is a struggle between the Germanic and Romanic races. "Indeed, the Gallic race, or the present French hybrid of which the Gauls still form the chief part, is threatened more and more with suppression by *Germanthum*. In the end there awaits it the fate of all lower organisms in the Darwinian struggle for existence." This very admission of Wagner in the first pages would seem to preclude any pious indignation about injustice, violation of treaties, imperialism, etc., since he goes on to point to German colonial expansionism both in Europe and by emigration abroad as just another proof of her superiority. North America is a "new Germanic World Empire"; Australia soon will be; and Mexico has already proved it to France.

One might think that the Germans, having proved to their satisfaction that the French were on the way out, could therefore settle down and disregard the French, especially after the imperialism of Napoleon III had been ended so ingloriously at Sedan. But Wagner's hatred of the whole French nation is too intense and too irrationally nationalistic. He insists that it is the French people that is the enemy, not Napoleon. "As if Napoleon III didn't have to follow simply the national instinct of this people!" He did, to be sure, resort to war as a way out of the difficulties of despotism.

> But is this despotism anything else than the necessary product of the historical evolution of France and of an eighty-year revolutionizing of the people which destroyed the basis of any orderly free rule? . . . This people will always remain in-

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capable of freedom, because they are incapable of political self-rule, of the feeling of right in regard to others.[8]

In spite of his portrayal of the complete powerlessness, weakness, lack of population and expanding power of France, and in spite of his own advocacy of the Treitschkean doctrine that treaties are to be kept only so long as it suits national interest and that war is good in itself, he places the whole responsibility for the war upon the French—"the frivolous French breaking of the peace," and declares, "So unjust your demands, so just are ours."[9] But he gives his case away when he exclaims, "For the principle of might, of force, the right of might, the right of conquest decides and must decide. So it will happen in regard to Alsace-Lorraine and with full right."[10] He exhibits here a characteristically Treitschkean confusion of concepts of the old international law and the relativism, dynamism and amorality of *Machtpolitik*. Again, this sounds ominously familiar to our ears.

The various nationalistic arguments for the annexation of Alsace-Lorraine set forth in this pamphlet exhibit the contradictory nature of the various strains that entered into nationalism and reveal Wagner's conception of the rights and characteristics of a national State and of the principle of nationality in general. He claims that Germany is annexing Alsace-Lorraine on the basis of the nationality principle, "the most natural, the most enduring, mightiest, justest, most beneficial principle of state building and of the boundary of state territories." The French violated this; the Germans will restore it and this will mean peace and blessing for all Europe. But his summing up of the reasons for the annexation reveals the importance of other factors than the nationality principle. "We support ourselves on the nationality principle, on the principle of natural boundaries, and, with right, on the necessity for setting up more secure boundaries against insecure neighbors."[11]

[8] *Elsass und Lothringen und ihre Wiedergewinnung für Deutschland* (2d ed., Leipzig, 1870), ch. 1, esp. 2-3.

[9] *Ibid.*, 4-6.

[10] *Ibid.*, 64.

[11] *Ibid.*, 17.

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If we examine the different arguments advanced by Wagner, we find the following factors in his nationalism:

a) The Romantic criterion of a common speech and race as the basis for the national State;

b) The Romantic and Hegelian concept of the superiority of the whole over the part, therefore, the repudiation of the right of self-determination of Alsace-Lorraine as being only a part of the whole German nation whose will is interpreted by Prussia;

c) The Romantic idea that each nationality has a right to freedom with the Rousseauist and Hegelian addition that it must be forced to be free if it is too degraded by captivity to desire freedom (this is also applied to a demand that Germany should be free of the threat of France, its hereditary enemy);

d) The Romantic longing for the Rhine as "Germany's stream not Germany's boundary" and, therefore, the insistence that Germany win all the east bank of the Rhine, including the Swiss, Luxemburgers, Flemish, Hollanders;

e) The Romantic idea of a national mission but become intolerant and aggressive because of the assumption of superior *Kultur* and *Macht;*

f) Romantic melancholy over past national sorrows;

g) The old realistic military demand for defensible natural boundaries that are strategical points, even if this violates the nationality principle;

h) The argument of national economic necessity—Alsace-Lorraine must be won for Germany, if Germany is to become a great world Power;

i) The argument of pure force—the ancient "right of the sword", the insistence that small and neutral states have no right to existence;

j) The argument of national honor.

It is perhaps this mixture of mysticism and brutality that makes of modern nationalism such a heady drink, especially for the young, either individuals or nations.

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Now it will be observed that there are some striking contradictions in this union of pietism and Romanticism and *Realpolitik*. The speech criterion is a sacred truth—it is the real basis of national life and unity. It is a crime on the part of the French to have degraded the Alsatian language (i.e., the peasant language) to a dialect of French. Therefore, they, the Germans, will restore the Alsatians to their Germanhood even against their deluded protests that they prefer French civilization and French political life, that they feel themselves French and Catholic, that they hate Prussianism, and that they are bound by ties of historical experience and by economic well-being to France. All this is merely a sign of degradation by the French. "Therein lies our best justification in regard to the Alsatians and the Lorrainers," he says; "we give them back the highest and most valuable right of a *Volk*, the right to their *ureigene Nationalität*." [12]

Nevertheless Wagner admits without apology that the Germans are to violate this linguistic boundary when the economic and military interests of Germany would be favored thereby. It is French chauvinism and absurd insistence on natural boundaries that demand the Rhine as a boundary for France, but it is only justice to Germany and an atonement for the shedding of German blood to demand Metz and all its hinterland, although admittedly within the French speech boundary. Prussia will soon Germanize it. Also in Alsace, where the speech boundary intrudes over the Vosges crest, the French are to be incorporated into Germany so that Germany may have a defensible natural frontier, without the danger of wedges of French territory protruding into German territory.[13]

All this has a resemblance to the drawing of the Sudeten-Czech boundaries at Godesberg and after Munich, especially since Wagner insisted that the Czechs, too, as well as the Poles, Danes and French, are a dangerous wedge driven into German natural territories and must therefore be destroyed or assimilated by Germans.[14]

[12] *Els.-Loth.*, ch. 4-8, esp. 67-70.
[13] *Ibid.*, ch. 2 and 29-31, 34.
[14] *Ibid.*, 22.

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Moreover the annexation of Alsace and Lorraine is necessary, according to Wagner, if Germany is to develop her economic resources and carry out her historical destiny as a great Power, if it is to gain internal unity and become militarily impregnable. He answers the objections of liberal Germans and of neutral observers by a final summary:

> Then why should Germany take on this thankless task of reversing a history of one or two centuries and in the end only squander her powers thanklessly? Why? The answer is: *because Germany's national honor, her security and her interest, and indeed not last the true interest of her Alsace-Lorraine brother-stock which has neglected its nationality demand it.*[15]

He then concludes with an emotional apostrophe to the Germans who dare point out the weakness of these arguments.

> O Deutschland, when will thine own sons cease wounding thee to the death with their fanatical "objectivity"? When at last will a sound national egoism, along with the protection of the rights of others, think first of the weal of its own State and abandon the cursed cosmopolitanism with which we spare every justified and unjustified sensibility of foreign countries?[16]

Another pamphlet published by Wagner in 1871, *Die Veränderungen der Karte von Europa,* expressed the same expansionistic urge to incorporate these renegade Germans as the *Elsass und Lothringen* had when it declared, "Europe will have to get used to the restoration of the alienated parts of our nation to our State and be quiet!"[17] Not merely are "Germans" along the borders to be "freed from oppression" as the Alsatians have been, but the Teutonic stocks already independent should not be allowed to exist as either independent or neutral states. That is the sin of Particularism, since they are really only separated parts of the German nation. Prussia must, therefore, crush this Particularism as it has already that within the German Confederation. Neu-

[15] *Els.-Loth.*, 36, Wagner's italics.

[16] *Ibid.*, 86.

[17] *Ibid.*, 35; *cf.* 4.

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trality is unnatural and artificial, and small states have no right to exist, especially small "German" states. The claim that these states make to being independent nations, not merely states, i.e., to being the Swiss nation and the Dutch nation, with their own culture, language, political form, is contemptuously brushed aside with the declaration that they are artificial, not natural, states, because they are not national states.[18] Nor are these nations to be allowed any right of self-determination or plebiscite, since the will of the part cannot guide the whole. Willy-nilly, they must enter the "Promised Land, the great united German Fatherland."[19] "The right of self-determination of peoples can therefore never be a right of a single national fragment over against the whole nation."[20]

In another moment of Hegelian prophecy he exclaims:

> And surely now and in the future the world-historical process of the reorganization of the German National State will not halt because the Hanoverian or the Schleswig-Holsteiner does not voluntarily surrender his particularism and the alienated Alsatian Alemannian is still blinded with Parisian tinsel-gold or keep us from advancing to a greater future merely because the Swiss dream of the "peasants' victory over the armored knights" or the Dutch dream of that other time when their admirals with the broom at the mast sailed up the Thames. The world belongs to those who are awake![21]

He answers the rhetorical question, presumably of the German Liberals, "Has then the right of conquest and annexation without asking the people concerned no great seriousness?" And he answers confidently, "Not in the least, so long as that policy is employed only within the limits of the nationality principle."[22]

We can see why the Swiss and Dutch slept badly at nights in those times, just as they have recently, and just as they

[18] *Die Veränderungen*, 14 *et seq.*; *Els.-Loth.*, ch. 2 and 40-3, 49-51, 69-70, 78-85.

[19] *Els.-Loth.*, 71.

[20] *Ibid.*, 62-5; *Die Veränderungen*, 14 *et seq.*

[21] *Els.-Loth.*, 66.

[22] *Ibid.*

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did in the burgeoning of pan-Germanism in the nineties and pre-war years.

Let us end this act in Wagner's life with this touching picture of joy and happiness: "As morning gifts to the bride Germania in the new union, the Prussian State brings the redeemed provinces of East Prussia, Pomerania, Schleswig-Holstein and Alsace-Lorraine. Danzig and Strassburg are the jewels which deck the imperial crown of the Hohenzollerns, the true augmenters of the Reich." [23]

The Wars of Unification in Germany had among their repercussions an intensification of the nationalism of the German economists, particularly the historical economists. Their nationalism finds expression in an exclusive insistence on national interest even to the detriment of international interests, and a strong relativism and national egotism in their view of all economic history. The revolt against Manchesterism is considered the "German Mission", and just as in the Romantic period Schlegel and Fichte and Müller called the Germans to battle for their national culture, so now German economics is to conquer the mechanistic, atomistic, materialistic economics of England and France and substitute for it German idealism, teleology, totality, creativeness, imagination, morality and religion.[24]

The period following 1870 saw the rise of two other great factors in German history—rapid industrialization and the concomitant growth of international socialism. Both of these

[23] *Die Veränderungen*, 34; *cf. Els.-Loth.*, 4, 33, for the same phrase, "Mehrer des Reiches", significantly bestowed on Hitler after the annexation of Bohemia.

[24] K. Chr. Planck, "Manchestertum und deutscher Beruf", *Zeitschrift für die gesamte Staatswissenschaft* XXXI (1875), 304-419; "Wagner on the Present State of Political Economy", *Quarterly Journal of Economics* I (1886), 113-33 (partial translation of Wagner's "Systematische Nationalökonomie", in Conrad's *Jahrbücher für Nationalökonomie und Statistik* XII [1886], 245 *et seq.*); Theo Oelsner, *Der Siegeszug der deutschen Idee* (Berlin, 1870); G. Schönberg, "Die deutsche Freihandelspartei und die Partei der Eisenacher Versammlung", *Zts. f. d. g. Stw.* XXIX (1873), 493-532, esp. 531. Schmoller in his address to the *Verein für Sozialpolitik* formulating its program sets forth as the task of German national economy to free this science completely from the doctrines of the English and French utilitarian philosophy.

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factors filled the national economists with alarm, because each seemed to them a dangerous disintegrating force, inimical to the newly-formed German nation. Therefore they declared that the first national task after the foundation of the Empire should be the solution of the "social question".

With this purpose in mind, many of the leading members of the Younger Historical School, including at that time Adolf Wagner, formed in 1872 at Eisenach the *Verein für Sozialpolitik* to combat both economic liberalism and democratic socialism and defend the Prussian cameralistic tradition as expressed in the "social monarchy" of the Hohenzollerns. Their program declared that the immediate task of the German Empire was the concrete solution of the social question, but the much more fundamental task was the struggle of German national economics against the English doctrine still dominating the Free Trade School. The *Verein,* then, must work to secure the social reforms necessary to save the nation from revolution and disunity. They seek, the program concludes, the union of State, People and Economy for the advancement of national greatness.[25] The *Verein für Sozialpolitik* joined together an ill-defined group of various shades of opinion, the only common denominator of which was its counter-revolutionary nationalism. The purpose was common—to save the nation—but the means, as usual, divided the group into fac-

[25] For this nationalism of the *Verein für Sozialpolitik,* see the *Verhandlungen der Eisenacher Versammlung zur Besprechung der Socialen Frage am 6. u. 7. Okt. 1872* (Leipzig, 1873); G. Schönberg, *Zts. f. d. g. Stw.* XXIX (1873), 493-532, and "Zur Literatur der socialen Frage", *ibid.* XXVIII (1872), 414 *et seq.,* and his *Die sittlich-religiöse Bedeutung der sozialen Frage* (Stuttgart, 1876); A. Wagner, *Rede über die sociale Frage* (Berlin, 1872), *Die Abschaffung des privaten Grundeigenthums* (Leipzig, 1870), and his *Offener Brief an Herrn Oppenheim, eine Abwehr manchesterlicher Angriffe gegen meine Rede über die sociale Frage* (Berlin, 1872), esp. pp. 5, 13, 17, an attack on the internationalism and Judaism of the Free Trade Liberals; Adolf Lasson, in his "Wahrer und falscher Patriotismus", in *Deutsche Revue* X (Jan.-Je., 1885), 64, complains of the heresy-hunting nationalism of the protectionists and that now, "The new economic policy is the only patriotic one, and whoever opposes it is no patriot but is in the pay of some alien Power or of some alien interest-group, or at least has no love for his Fatherland; also that all those who oppose colonialism are likewise accused of being *'unpatriotische, selbstsüchtige, und vaterlandslose Leute.'*"

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tions. These "socialists of the chair", as they were called derisively, agreed that the welfare of the national organism must triumph over individual and class interests and that the State was the creator and regulator of all the ethical and economic institutions of the nation, but disagreed on whether the necessary reforms should be accomplished by the greatest possible intervention of the State or by the gradual ethicizing of the economic set-up, i.e., a species of moral rearmament.

The impetuous temperament of Adolf Wagner very quickly tired of these timid temporizing groups, and he drifted away from the *Verein* about 1877 to formulate an extreme state socialism characterized by its organicism and attack on liberalism, its strong Prussianism, its belief in the principle of State intervention in all phases of the national life, and by its identification with the social and economic policies of Bismarck.

The ultimate nationalistic aim of Wagner's state socialism can be seen to some extent in the works written during this period of the seventies and eighties, which established his reputation as one of the foremost economists of Germany and as the leading state socialist.[26] These academic writings, however, do not reveal his nationalism as clearly as his pamphlets and his political speeches and activity, partly because they are academic and partly because they are restrained by their inherited form. Both his *Grundlegung der politischen Oekonomie* (1876) and his *Finanzwissenschaft* (1872) had begun as revisions of the standard textbook of economics of his fairly orthodox professor, Rau. In these academic works, Wagner lays the theoretical basis for the economic and political policies

[26] Wagner's chief theoretical works of interest to us are his *Grundlegung der politischen Oekonomie* (1st ed., 1876, the 7th revision of pt. i of Rau's *Lehr- und Handbuch der politischen Oekonomie*), 3d ed., 2 vols. (Leipzig, 1892-4); his *Finanzwissenschaft* in 4 vols. (originally a revision of Rau's *Lehrbuch der Finanzwissenschaft*), vol. I (1st ed., 1872), 3d ed. (Leipzig, 1883), vol. II (1st ed., 1880), 2d ed. (1890); his articles "Finanzwissenschaft und Staatssozialismus", *Zts. f. d. g. Stw.* XLIII (1887), 37-122, 675-746; "Systematische Nationalökonomie", Conrad's *Jahrbücher für Nationalökonomie und Statistik*, Neue Folge XII (1886), 197-252; and "Staat in nationalökonomischer Hinsicht", Conrad's *Handwörterbuch der Staatswissenschaften* VII (3d ed., Jena, 1911), 727-39.

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of the state socialism which later not only appear in the programs of the Pan-German and Land Reform Leagues but are incorporated as policies of government, aiming toward internal unity and security under Bismarck, and military power and expansion under William II. The significance of the policies and measures advocated can be properly understood only in the light of the nationalistic purposes of pan-Germanism and the underlying principles of integral nationalism according to which each and every part of the body politic must function actively in agreement with the national purpose of the whole.

The *Sozialpolitik,* then, of Wagner's state socialism offered as a solution of the "social problem" and "organic social reform", a transformation of the individualistic economy into a "social economy" or a true national economy, in which the "true and permanent interests of the species [*Gattung*], of the people as a whole, must always be the test for deciding the manner and extent to which the desires and aims of classes and individuals are to be satisfied." [27] The new social economics advocates reform, "not for the sake of one-sided eudemonism, not for the sake of the individual or individuals, but for the sake of the whole, for the sake of the nation." [28] In any case, the State, through its authority, not through the consent of the people, is to control by means of its law-making power the whole organic structure of the political, economic, and social and spiritual life of the nation and evolve a social or public law, instead of private law, a true Germanic law, instead of Roman law of individual rights and private property.[29] "For political economy a rectified philosophy of law, which deduces from the organic conception of the State and of political economy consequences for political, juridical, and economic life,

[27] *Quart. J. of Ec.* I (1886), 126; *cf. Grundlegung* I, secs. 2, 5, 6, 149-51, 154 *et seq.*, 162 *et seq.*, and Books V and VI, esp. secs. 315, 323, 325, 345, 348-52; *Finanzw.* I, 32-4, 36-7.

[28] *Handw. d. Stw.* VII (3d ed., 1911), 730.

[29] *Grundlegung* I, *loc. cit.* and secs. 18, 297, 299-300, 352, 358-9, II, Books I and II, esp. secs. 1-6, 11-3, 20, 24, 90-1, 95-6, on his "Social Economy"; *Quart. J. of Ec.* I (1886), 116; and *Handw. d. Stw.* VII (3d ed., 1911); and *Zts. f. d. g. Stw.* XLIII (1887).

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is an essential need, but political economy and legal philosophy owe each other a mutual support." [30] The only solution of the political and economic problems of Germany is "the modern organic and historical concept of the State." It must develop a truly national type of jurisprudence, and economic and financial policy.

The State has as its purpose national power which includes as an internal aim national political and economic unity, wealth, welfare and culture, and as an external aim the maintenance of the nation against other nations. The State must be backed by instruments of power and compulsion necessary to control the evolution of the nation and its national economy. Wagner's "social financial policy" conceives of the army, not as a necessary evil, as the English Liberals did, but as a national productive force, a part of the national capital, and the payment of taxes for the army is not individual deprivation but mere payment of just debts, i.e., it is interest on the national capital, as Adam Müller had claimed. The army is itself productive, and since it guarantees the independence of the nation, it is the basis of the national economy.[31]

The State must take preventive measures to weaken its internal enemies, political and economic liberalism and democratic socialism, and to strengthen its internal unity and national power. For this purpose it must call upon its allies, the church, the schools and the army, to aid it in establishing the sense of duty, honor, self-sacrifice, loyalty, and obedience to the authority of the nation, and in combating materialism, hedonism, individualism, liberalism, skepticism, Marxism and democracy.[32] It must further take direct legal measures to counteract these threats to national unity by action against the laissez-faire industrialists (of the Liberal Party) and by simultaneous removal of some of the bitterest grievances of

[30] *Grundlegung* I, sec. 352, p. 872 (3d ed.).

[31] *Ibid.* I, secs. 348-9, 358-9, 361, 371-5; *cf.* his earlier defense of Prussian militarism on economic grounds in *Preuss. Jahrb.* XXI (1886), 392-3; *Finanzw.* I (3d ed., 1883), secs. 27-9, 182-92.

[32] *Grundlegung* I, secs. 18, 62-4, 151, 300-2, 313-4, 320, 348, 354, 360, 365; *Quart. J. of Ec.* I (1886), 123, 128.

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the workers. These direct measures can be applied through the State's control over distribution exercised by laws of property and of contract and by its policies of taxation levied to promote national welfare and unity; by its police power; by its protective tariff; by direct intervention and competition with private business through a policy of building State railways and engaging in State monopolies; by social legislation aimed at weaning away the workers from socialism and at encouraging a bourgeois spirit of conservatism through the device of giving them a stake in the nation.[33] The State must prevent further growth of the proletariat by saving the peasantry and the artisans. Workers' and employers' associations are to be encouraged by the State because this is a step toward a structure of corporate representation which would avoid the un-German system of majority rule and coördinate the workers and the industrialists into a national organism safely controlled by the true German ruling classes—the army, the church, the Prussian bureaucracy and the monarch—all of whom as "organs of the national economy" represent the true will of the German nation.

The well-known "Wagner's law"[34] declared that State control would continue to increase, because this is a natural and necessary corollary of increasing national might, a sign of the growth of the *Kulturstaat*—just as the growing rôle of the army was. He envisages calmly (and prophetically!) as a final result of this tendency increased expenditures and taxation for a greater army, navy, diplomatic wars, permanent war staffs, munitions, factories, till finally the State becomes a State of functionaries and the military organ exercises a dominant control over national economy and finances.[35]

The church is a vital organ of the national economy and, therefore, must cease to be a feudal, class institution and be-

[33] E.g., State encouragement of workers' savings banks, joint housing associations, coöperative insurance associations, State aid to kindergartens, charitable services, recreations, etc.

[34] *Grundlegung* I, secs. 357, 362-70, esp. 363 and 367; *Finanzw.* I, 36.

[35] *Grundlegung* I, secs. 354, 371-5; *cf. Handw. d. Stw.* (3d ed., 1911), 738; *Finanzw.* I (3d ed.), secs. 27-9, 32-7.

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come a living national church. There must be a moral and religious regeneration of the nation, a rallying of the nation to true German Christianity. This was an essential condition for the "Social Monarchy" and its policy of national greatness. This national pietism of Wagner was not only expressed vigorously in his writings and speeches but also in direct political action by his leading rôle in the formation and development of the Christian Social Party. Earlier, he had expressed his ethical socialism through his activities in the Evangelical-Social Congress to which his epoch-making speech of 1871, "On the Social Question", was addressed.

In the *Christlichsoziale Arbeiterspartei,* founded by Stoecker in 1878, Wagner was closely associated with Stoecker for two decades and early succeeded him as president.[36] The humanitarian radicalism of its inception had at first somewhat alarmed Bismarck and the Junkers, who did not perceive immediately its fundamental counter-revolutionary purpose, but its paternalism and patriotism[37] were intensified by the economic and political struggles, internal and external, and by the increasing polemical demagogy of both Wagner and Stoecker, until it became authoritarian, reactionary, nationalistic and intolerant. It became neither Christian nor social, but anti-Semitic, almost exclusively. Whether as cause or effect, as it failed to reach the class-conscious and skeptical workers and became a party of small shopkeepers, artisans and peasants, i.e., of the petty bourgeoisie, and dropped the *Arbeiter* from

[36] Walter Frank, *Hofprediger Adolf Stoecker* (2d ed., Hamburg, 1935), ch. 2 and pp. 24, 174 *et seq.*, 396-8, and *passim;* Kurt Wawrzinek, *Die Entstehung der deutschen Anti-Semiten Parteien, 1873-90* (Berlin, 1927), 18-30.

[37] *Cf.* Frank, *op. cit.*, 39-48. The program of the Party: "The Christian Socialist Workers Party is founded on the basis of the Christian faith and the love of King and Fatherland. It rejects the present Social Democracy as impracticable, un-Christian, and unpatriotic. It seeks a peaceful organization of workers in order to prepare practical reforms in harmony with the other elements of the national life. . . . Authority and piety are the right cures of the present. . . . No one can permanently better your lot but the State." It bids the workers to be reconciled to the Prussian State and receive social reforms in return. *Cf.* 1891 program, "We have told the workers that they must work hard, economically, and conscientiously, even if they never obtain a better situation."

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its title, it elevated its anti-Semitism into a political program and thus the *Christlichsoziale Partei* became the first political party of anti-Semitism.[38] For the spread of anti-Semitism, it seems undeniable that Wagner and Stoecker must bear a good part of the responsibility. They were looked upon by friend and foe as among the leaders of the anti-Semitic agitation and were openly attacked in the Prussian Diet as responsible for the Neustettin riots and the pogroms in Russia, Hungary and Rumania.[39] They bear the still heavier responsibility of being spiritual fathers of Adolf Hitler's anti-Semitism by his own admission.

Wagner maintained that his anti-Semitism was on economic and social grounds alone, and, in fact, the first political manifestation of anti-Semitism, the "Berlin movement" of the Christian Social Party, arose from the tariff controversy and the whole revolution in economic policy in 1878-79, with Bismarck's desertion of the Liberals and his alliance with the agrarians, protectionists and Conservative Junkers. Wagner and Stoecker then rallied to the party of "Positive Christianity" all enemies of liberalism, internationalism, large-scale capitalism, democracy, and the Jews. This fusion was aided by the fact that individual Jews had been involved in the financial crash of 1873 and were prominent leaders of the free traders (and thus of the Liberal Party) and of the Social Democratic Party.

The lower middle classes hated the Jews as representatives of a speculative capitalism which had ruined them; the upper middle class hated them as leaders of the socialistic proletariat; the agrarian protectionists hated the Jews as a symbol of industrialism and the champions of free trade; the Junkers feared the peril to their political power of a resurgent 1848

[38] L. L. Snyder, *From Bismarck to Hitler*, Pt. I, ch. 2, Pt. II, ch. 8; Kurt Wawrzinek, *op. cit.;* D. von Oertzen, *Adolf Stoecker, Lebensbild und Zeitgeschichte*, 2 vols. (Schwerin i. Meckl., 1912), chs. 5-8; Frank, *op. cit.*, ch. 1, esp. 39-43, 70-8, 174 *et seq.*

[39] Proceedings of the 61st session of the Prussian Diet, March 14, 1884, *Stenographische Berichte über die Verhandlungen des preussischen Abgeordnetenhauses, 1884*, pp. 1823-5; B. Lazare, *Antisemitism, Its History and Its Causes* (Eng. tr., New York, 1903), 221; *Antisemiten Spiegel* (2d ed., Danzig, 1900), 41.

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liberalism and the weakening of their almost feudal social authority over the peasants if the liberal economic and political ideas should continue to spread. The Jews were accused of anarchism, of democratic communism, of internationalism. Therefore, the Jews were hated both as capitalists and as communists, even as now; in other words, for many the social question became the Jewish question.

Wagner himself reduces the social question to the Jewish question in a speech in the Prussian Diet, to which he had been elected on a platform of anti-Semitism: "The anti-Semitic tendency of Stoecker and myself, and of those whom we represent, has not proceeded against the Jews as a religious party, but against the evil practices in economic and social life which unfortunately spring in large part from our Jewish fellow-citizens." [40] And again in the Diet he lays the blame for the universality of anti-Semitic manifestations on Jewish usury and land speculation, their "fraudulent bankruptcies and unscrupulous swindling" characteristic of the "Jewish Race". "This anti-Semitic movement is nothing but the product of our recent social and industrial development," of the newer economics of unrestricted profits derived from Jewish ethics.[41] He looks upon the economic practices he attributes to the Jews not as injuries to private individuals but as injuries to the German nation. The bubble ventures of 1871-73, in which "mostly Jews were involved . . . consequently brought our nation to ruin."

In general, whatever the original motivation of Wagner's anti-Semitism, its nationalistic character cannot be denied, and indeed that seems to be its dominant aspect. It is Wagner's resentment against the "unparalleled exclusiveness" of the Jews, their alien ways and beliefs, their refusal or inability to become incorporated in the national organism, their "arrogance" when emancipated, and their "domination" of political life. His nationalism also shows in his identification

[40] *Stenographische Berichte, 1885*, vol. I, 581; *cf.* also Wagner's review of S. Neumann's *Die Fabel von der jüdischen Masseneinwanderung*, in *Zts. f. d. g. Stw.* XXXVI (1880), 777-83; *cf. Offener Brief*, 3, 17, 27.

[41] *Stenographische Berichte, 1884*, pp. 1823-5.

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of the Jews with Manchesterism, internationalism, financial capitalism and usury, political liberalism, and the industrialism which is destroying the loyal peasantry and Junkers and their attachment to the soil of the Fatherland. He identifies Judaism also with all the forces he fears will undermine the true Germanic spirit of organicism, pietism, duty, unquestioning obedience and self-sacrifice, i.e., with modernism, mechanistic materialism, critical rationalism, cosmopolitanism. It is the Jews, "through whom our Fatherland has been more and more economically, socially and morally corrupted." The opposition to this corruption is "the glory of our nation"; Austria cannot save herself as Prussia has, for "the press is to a still greater extent in the hands of the Jews, and the money market is still very dependent upon the Jews."[42]

Moreover, their control of the press enables them to fight against this national regeneration by attacking all the patriotic Germans, such as himself and Stoecker who would save their Fatherland, and by subjecting them to martyrdom. All the liberal press, which was largely opposed to anti-Semitism and quite international in its viewpoint, he attacks as Jewish-owned.[43]

The anti-Semitic agitation of Wagner and Stoecker became so violent that it alienated even the Conservatives who had allied themselves with the Christian Social Party and had thus elected Wagner and the other Christian Social candidates to the Diet. Therefore, in 1885 the Conservative caucus decided to drop anti-Semitism in its party platform, and thus Wagner was defeated in the elections of 1885.[44]

With the defeat of the political party of anti-Semitism, Wagner declared he would withdraw from political life and devote himself exclusively to his academic work. Nevertheless, he remained President or honorary President of the Evangelical Social Congress, leader of the Christian Social Party till 1896, member of the Prussian House of Lords, 1910-

[42] *Stenographische Berichte, 1884*, pp. 1823-5.

[43] *Ibid.; cf. Offener Brief*, 3, 17, and his interview with Bahr, in H. Bahr, *Anti-Semitismus* (Berlin, 1894), 75.

[44] *Allgemeine Zeitung des Judenthums* (1885), 22, 39, 55, 89, 108 *et seq.*

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1917, and took an active part in other activities of a nationalistic character, especially of the Land Reform League and of naval expansionism, until the end of his life.

In spite of Wagner's declaration, his writings of the last period [45] are for the most part more nationalistic pamphleteering than serious academic work and, coinciding as they do with the pre-war period, mark the culmination of a gradual but significant change in Wagner's nationalism. Even the *Machtpolitik* and economic nationalism, which had succeeded his earlier romantic cultural nationalism, are no longer enough but yield to the new pan-Germanism of navalism and *Weltpolitik,* and their dream of a Greater Germany and of a Germanic World Empire.

These writings reveal the implicit militarism and nationalism of Wagner's earlier more theoretical works and of the majority of his contemporaries of the Younger Historical School and Socialists of the Chair, and make more explicit the subordination of economics to the military purposes of the new foreign policy of Germany under William II. He declares it his conviction that the military character of the State was, for the German nation,

> an even greater contribution of the Prussian State in the 19th century than its national economic measures of the *Zollverein* of 1818, yes, even the greatest. . . . I speak here according to my conviction, national economist though I am. . . . This army, this grand-preventive institution against disturbances of inner and outer law, order, and safety, this institution which has cost us something and still costs us, but which has repaid in full this cost both directly and indirectly by its favorable effects on State and nation, and not least on economics, it is not an "unpro-

[45] Most of his writings are devoted to financial and agrarian reform for the purposes of national defense and naval expansion, such as his *Agrar- und Industriestaat* (1st ed., Jena, 1901), 2d ed. (1902); "Die Notwendigkeit der Reichsfinanzreform" in *Die nationale Bedeutung der Reichsfinanzreform* (Berlin, 1908), 24-44; *Die Reichsfinanznot und die Pflichten des deutschen Volks wie seiner politischen Parteien* (Berlin, 1908); *Staatsbürgerliche Bildung,* a lecture before the Land Reform League in 1912, *Soziale Streitfragen,* Heft LIX (Berlin, 1915); *Wohnungsnot und städtische Bodenfrage* (Berlin, 1901), *Soziale Streitfragen,* Heft XI.

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> ductive" but a truly productive institution, not merely from the political but also from the economic standpoint. This can only be mistaken by one who overlooks the connection between national might, security, honor with economic development and prosperity. What we owe the Prussian army after Napoleon is shown in the annals of history in 1864, 1866, 1870, 1871, and also in 1848-49, and it manifests itself clearly in the development of our people and our national economy in the course of the century.[46]

Wagner's pan-Germanic ideal of a *Mitteleuropa* emerges again in his writings, but now finds support from the demands of the Pan-German League. The national military state will aid the economic interests of Germany even more in the future, he claims, in that Germany in the twentieth century may serve as the nucleus of a Greater Germany, a great Middle European economic bloc which will be the regeneration of the Carolingian Empire. Yet again this bloc is to be formed, not for economic reasons primarily, but for national ones, to solve the problems of population and agrarianism, to solve the social problem, to make Germany self-sufficient in time of war, free it from fear of English blockade, and enable Germany to "act as a counterweight against the political economic world super-powers" so that we can "demand for our nation the place we deserve among the nations of the earth. . . ."[47]

Two intensely nationalistic writings of the pre-war period reveal Wagner's close kinship with the pan-Germanic ideas: *Vom Territorialstaat zur Weltmacht* (1900), actually published by the Pan-German League in its *Beiträge zu Beleuchtung der Flottenfrage* as a part of its campaign for a "navy second to none", and *Gegen England!*, a violent pamphlet mirroring the Anglophobia, imperialism and navalism of the eve of the war.[48]

[46] *Vom Territorialstaat zur Weltmacht* (Berlin, 1900), 11-2.

[47] *Ibid.*, 27-32; *cf. Agrar- und Industriestaat* (2d ed.), *passim;* and Heinrich Dietzel, "Agrar- oder Industriestaat", *Handw. d. Stw.* (4th ed., 1923), I, 62-72; *cf. Preuss. Jahrb.* XX (1867), 42.

[48] Published in the military organ, *Illustrierte Zeitschrift Ueberall für Armee und Marine,* in 1912 and reprinted again as a separate article, its 6th ed.

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The *Gegen England!* is an unpleasant example of the realism and swashbuckling affected by the Kaiser and by the Foreign Office in the years just before the War, in its cynicism about the invasion of Belgium and the rights of small nations, in its boastful justification of the annexation of Alsace-Lorraine and Schleswig-Holstein, in its glorification of Prussian *Machtpolitik* and arrogant confidence in Germany's victory, and in its intolerant contempt and hatred for the Slavs, the French, the Czechs and especially the English. The full force of Wagner's attack falls on England, as the title indicates. His bitterness is deep at England's unwillingness to surrender her mastery of the sea, to admit her economic defeat by Germany's national economy. He resents especially "the undervaluation of our political power, yes, of our military might" and of the glories of the Hohenzollern Empire. Germany is misunderstood, he claims, showing thus the pre-war German inferiority complex and repeating petulantly that Germany will not let England be her governess any longer. The deepest wound, however, is that England has betrayed her *Muttervolk,* her blood relatives. Not only is the German, King Edward VII, responsible for the "encirclement" policy, but England's very nucleus of state-building power is German.[49]

Although Wagner was already nearing seventy at the time of the agitation for colonialism and navalism and greater military expenditures and seems to have taken no official position with the Pan-German League, he does edit in 1900, with Schmoller and Sering, a book published by the Naval League, *Handels- und Machtpolitik,* a typical pan-Germanic plea for expansion in South America and the need for Germany to exceed England's naval power. In 1901 at a public meeting he declared,

> I acclaim with joy that Germany has become a world Power and that the younger Kaiser has shown himself a true Hohenzollern, for he has set himself a great new task—the creation of

appearing in 1914 with all its proceeds devoted to the care of widows and orphans of veterans, as Wagner had done with *Elsass und Lothringen* in 1870.

[49] *Gegen England!*, 1 *et seq.*, 9.

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an efficient navy, which for once makes us independent of England in the pursuit of our own interests.[50]

An article by him in *Die Zukunft* of January 1898, entitled "Flotte und Finanzen",[51] attacked the opponents of *Militarismus* and *Weltpolitik* and of the consequent levying of new and heavier taxes for Germany's armament and naval race with France, Russia and England.

Wagner was meanwhile speaking at public meetings and writing in popular journals on the problems of national finance, insisting on the necessity for financial revision and tax reforms to meet the new and increasing national needs. In one of these public meetings in 1908 Wagner answers the complaints made against higher taxes:

> It is spent, indeed, for *Kriegsmacht*, for the first and most important of all national, and may I add, of all economic necessities. . . .[52] Therefore, all classes of the people must learn to bear the privations caused by luxury taxes and higher food prices due to increased agrarian tariffs. . . . We can and must bear them with the proper national, social, and political feeling of duty. . . . We cannot renounce our strong armed might — we cannot and will not renounce our strong armed might on the sea. A strong navy is the task of the German Empire for all eventualities.[53]
>
> We can and will bear these burdens. The poverty-stricken Prussian land and folk accomplished its preparation for the political rebirth of a mighty German State with much greater sacrifices and didn't go to ruin because of it, but became strengthened thereby. . . . Our German, thoroughly developed national economy and the sound state of our German finances furnish us the necessary material means.[54]

It is significant that Wagner's characteristic views on taxation, those expressed and taught by him to the generations of students in the seventies, eighties and nineties, are those

[50] *Agrar- und Industriestaat*, 1.

[51] "Flotte und Finanzen", *Die Zukunft* XXII (1898), 30-40.

[52] *Die nationale Bedeutung der Reichsfinanzreform*, 26-7.

[53] *Ibid.*, 35, 43; *cf. Agrar- und Industriestaat*, 1; *Die Zukunft* XXII (1898).

[54] *Gegen England!*, 41; *cf. Preuss. Jahrb.* XXI (1868), 393, 398.

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adopted as the official program of the Pan-German League and that Wagner's renewed public activities in behalf of the adoption of his policies precede, then parallel, the campaign of Graf Ernst zu Reventlow and the League in 1908 for financial reform.[55] The Pan-Germans even demanded a patriotic sacrifice of the pleasures of smoking and drinking, just as Wagner[56] had done. Such selfish indulgence was un-German. Guns rather than butter!

The nationalism implicit in Wagner's state socialism comes out very clearly in his increasing public activities in behalf of agrarian reform after 1895, at a time when Germany had reached the fifty per cent mark of industrialization of her population. The question of agrarian versus industrial state as the best method of increasing Germany's national power divided economists and public alike. Wagner was a leading champion of the agrarian state:

> A satisfactory protective tariff for agriculture, and one higher than the present one, lies in the whole national interest, if indeed thereby the development of an industrial state and the increase in population will be retarded to the universal advantage of the workers and of the German economy. . . . The preservation of a productive land economy means the preservation of the German *Volk* in the present and the future.[57]

The agrarian economy is "the basis of our *Volkstum,* the foundation of our *Wehrkraft.*"[58]

Moreover, Wagner's nationalistic agrarianism, which furnished one of the taproots of National Socialism, was taken over almost in its entirety by the Pan-German League and the Land Reform League[59]—and for the reasons first advanced

[55] *Cf.* the declaration of the League's financial program in *Alldeutsche Blätter* XXXVIII (1908).

[56] *Die nationale Bedeutung der Reichsfinanzreform,* 33.

[57] *Agrar- und Industriestaat,* 1-2; *cf. Terr. z. Welt.,* 26.

[58] *Die nationale Bedeutung der Reichsfinanzreform,* 35.

[59] For the identification of the Pan-German agrarian and social reform with Wagner's doctrines and for the Nazi approval of the Pan-German national socialism, see L. Werner, *Der alldeutsche Verband, 1890-1918* (Berlin, 1935), 94-8; *Alldeutsche Blätter,* during 1898 and 1899, esp. Hugenberg's articles on

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by Wagner in defense of his policy of maintaining the dominantly agrarian character of Germany, i.e., to maintain the level of the army through protecting the peasantry, "the fountain of youth of our national military power", "the source of a healthy national spirit", to avoid the formation of a rootless revolutionary proletariat to guarantee self-sufficiency to Germany both in peace and war, and to avoid importing foreign (i.e., Polish and Jewish) laborers.[60] The means advocated by the Pan-German and the Land Reform Leagues were the same as Wagner's, too—agrarian protective tariffs, extension of the boundaries of the German Reich to breed a larger peasant class and relieve overcrowding in the revolutionary areas of the cities, assurance of peasant land tenure by ending usury and speculation over the soil of the Fatherland, subordination of the profit motive and rights of private property to national aims. *Volkstum steht höher als Reichtum.*

The extreme manifestation of Wagner's national socialism is shown in his relations with the German Land Reform League which began to flourish shortly before the World War and still flourishes in Germany today. It was a sort of single-tax association for national social ends, with a cult of *Blut und Boden, Volk und Heimat.*[61] Wagner's pamphlet, *Staatsbürgerliche Bildung,* was given free to all subscribers to the League, and Damaschke, its leader, stresses Wagner's constant encouragement of the League even in its crude and exaggerated beginnings as leader, teacher and patron and that he was the first and, for a long time, the only one of the German professors

agrarianism; the *Handbuch des alldeutschen Verbandes* for 1918 by Heinrich Class, 72 *et seq.;* M. S. Wertheimer, *The Pan-German League, 1890-1914* (New York, 1924), 100 *et seq.;* A. Damaschke, *Geschichte der Nationalökonomie,* 12th ed. (Jena, 1920), I, 390 *et seq.,* II, 74.

[60] *Terr. z. Welt.,* 22; *Staats. Bild.,* 10-1; *Agrar- und Industriestaat, passim.*

[61] See esp. Damaschke's Appendix A of his *Kriegerheimstätte* (1915), *Soziale Streitfragen,* Heft 66, the reprinted letters of Peter Rosegger and of the Mayor of Vienna. Also included is the League's program for 1915: "The League of German Land Reformers stands for placing the soil, the basis of all national existence, under a law which furthers its use for worksteads and homesteads, prevents all abuses of the soil and uses all increment not earned by the work of the individual for the advantage of the *Volk* as a whole."

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to advocate these principles. Its present success, Damaschke insists, is due to Wagner and his principle that "land rents fundamentally depend on the armed protection which alone can preserve the Reich"; therefore, the cost of this armed protection of the Empire should be met in part by imperial taxation of this increase of value due to the growth of the German Reich to world power.[62]

The Land Reform League advocated its reforms for the fourfold purpose of *Wehrkraft, Erziehung, Sittlichkeit, Beamtenschaft.* It declared that the organic unity of the State must be based on the soil of the Fatherland. The State is an organism rooted in the soil, and its task is the *Organisierung* of the soil through closer union with the *Volk,* until the *Volk* become so deeply rooted in it that no storm can shake them. This can be accomplished by reform of laws of landed property and a program of truly national education.[63]

This education of the German citizen is to include a teaching of patriotic self-sacrifice, a renunciation of the individualism and freedom of Manchesterism and of the Roman law of unconditional private property. The citizens are to be taught the true medieval German law concept of property, that private property does not mean "the arbitrary will of the individual"[64] but a duty to the land and stewardship to the nation. German citizens must place themselves "on truly national grounds" and cease thinking in terms of absolute private property.[65]

This national social concept of property must be applied to four burning national problems: (1) the maintenance of the peasantry on the land, the best source of a loyal, powerful national army and national loyalty, (2) the improvement of urban housing conditions, (3) the provision of veterans' homesteads under national control, (4) the lifting of the debt slavery of the small farmers and the middle class. These reforms are

[62] Wagner, *Staats. Bild.*, 11.

[63] *Ibid.*, 13-4; A. Damaschke, *Kriegerheimstätte*, 20.

[64] *Staats. Bild.*, 10, 14, 22; *Wohnungsnot*, 10-6; Damaschke, *Kriegerheimstätte*, 1 *et seq.*, 14-7, 20.

[65] Wagner, *Staats. Bild.*, 14; *Wohnungsnot*, 10-6, and *Die nationale Bedeutung der Reichsfinanzreform*, 43.

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necessary to prevent revolution and distrust of the State. It was the speculation, high rents and high prices that caused the riots and the growth of Social Democracy after the veterans returned from the Franco-Prussian War, Wagner warned,[66] and this may happen again in the War of 1914. "We will be acclaimed as saving our *Volk* from a social revolution." This is not socialism but counter-socialism, Wagner and Damaschke declare; Marxian socialism thrives only among the urban proletariat driven off from the soil and home *(Grund und Boden)*.[67]

It is highly significant that this program was adopted in its entirety by the Pan-German League and that it receives the approval of the Nazi commentator on this movement, Luther Werner, who interprets this as a "means of reconciling the national and socialist movement in Germany by making both nationalism and socialism work together to achieve a national prosperity, which must be the aim of all racial comrades as well as of all the inhabitants of a State."[68] As we look over the evolution from Socialism of the Chair through State Socialism and Christian Socialism to the Land Reform League and the Pan-German League and finally to *Mein Kampf*, we feel that there has been a steady development here to National Socialism and that Adolf Wagner was one of those earlier "bourgeois intellectuals", the fruits of whose labors have been garnered so successfully by Adolf Hitler.

In the light of this it is easy to see why the obituaries on Adolf Wagner during the World War stress his national services. Tillmann lists all the reforms Wagner worked for, such as land reform, social insurance, nationalization of the railroads, inheritance tax, and says the good results of all these reforms were seen in the national loyalty and self-sufficiency during the War.[69]

[66] Wagner, *Wohnungsnot*, 9; Damaschke, *Kriegerheimstätte*, 8, 15.

[67] Wagner, *Wohnungsnot*, 9-12, 16; Damaschke, *Kriegerheimstätte*, 1 *et seq.*, 8.

[68] Werner, *Der alldeutsche Verband*, 97-8.

[69] H. Tillmann, "Adolph Wagner", *Westermanns Monatshefte* CXXIII (1918), 679-80; *cf.* F. Tönnies, "Adolph Wagner", *Deutsche Rundschau* CLXXIV (1918), 107-16.

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Sombart takes the same interpretation of Wagner's services and shows him as a factor in the transition from monarchial socialism to National Socialism.[70]

> Since German Socialism is National Socialism, awaiting its realization within the limits of the national union, the forces which are to bring it about are purely political forces; it is wholly a question for the statesman whose duty it is to direct and determine the play of interests and ideas.

The State is the nation, society, people, the social order—therefore the German philosophy of the State is socialism or national socialism.

> Representatives of such a socialism are found in abundance. . . . In the nineteenth century it was represented in Germany by men such as Lorenz von Stein, Karl Rodbertus . . . Albert Schaeffle, Adolf Stoecker, Adolf Wagner, Adolf Held, Friedrich Nietzsche . . . and others, and at the present we find among its protagonists many Italian Fascists and the German National Socialists.[71]

Wilhelm Vleugels, an avowed Nazi, in his article on the one hundredth birthday of Wagner,[72] likewise lists Wagner as a German socialist, i.e., an enemy of Marxian socialism, and a precursor of Nazism, in his limitation of the rights of private property, his program of governmental regulation of production in industry and agriculture, his insistence on ethical principles in economics, his social security legislation, his view of all financial measures as social and political measures, his demand for personal relationships in economics, his dislike of speedy industrialization, his socialist attitude toward income, labor and the right to work. Therefore,

[70] Werner Sombart, *A New Social Philosophy* (tr. from *Der deutsche Sozialismus* [1934], Princeton, 1937), 154 and ch. 13, esp. 159 *et seq.*

[71] *Ibid.*, 113.

[72] Wilhelm Vleugels, "Adolph Wagner, Gedenkworte zur 100ten Wiederkehr seines Geburtstages", *Schmoller's Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft im deutschen Reich*, Neue Folge, LIX (1935), 1-13.

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> German National Economy celebrates on March 25 the memorial day of the 100th birthday of its most important champion. Our time has special reason to remember Adolph Wagner, a man who incorporated in himself the ideal of the fighting scholar with a purity seldom found among the élite, as a leader of German socialism.[73]

Though this statement may be somewhat discounted as tendentious, there is more truth in this than in many other National Socialist interpretations of past thought. Wagner's state socialism was originally a curious fusion of Prussian cameralism, Hegelianism, and a religious socialism so radical in its anti-capitalism and anti-individualism that he was accused of Marxian collectivism, but his Prussianism and loyalty to Bismarck dictated that after 1880 this radical socialism should develop into a conservative agrarianism and militarism. His earlier insistence that an organic social economy meant merely a saner balance between the individual and society evolved into a belief that the balance must be weighted in favor of society. Wagner, however, was so deeply and intolerantly nationalistic in his inmost feelings and convictions that to him society meant the nation, the whole, as against the parts which must be coördinated, by force, if necessary, into the national organism. Therefore, the concepts of freedom and property must be reinterpreted in keeping with this organic national and social reform, and all economic, political, religious, scientific, educational and legal thought and action must be integrally reorganized to achieve the total regeneration of the German nation.

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[73] *Ibid.*, 1.

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THE LEGAL STATUS OF THE AGRICULTURAL LABORER IN THE SOUTH[1]

WHEN the South gave up the military struggle in 1865, its planters faced the problem of making a revolutionary change in their labor system. Slavery was abolished, and several forms of free labor soon replaced it. A small number of conservatives refused to recognize the new state of affairs and emigrated from the country; others expected the early failure of free labor and urged the importation of "coolies" and their use on the farms in place of the freedmen. Although free labor underwent many changes it did not collapse completely, while the policy of bringing in a new labor force never achieved any practical results. Most of the former slaveholders tried to make the best of the changed situation and operated their farms and plantations with Negroes, who remained the foundation of the new labor systems as they had been under slavery. Upon this foundation were built the systems of agricultural labor that characterize the South today.[2]

The first important type of free labor that appeared after slavery was wage labor. This system was widely used throughout the entire South during the years 1865-8, but it was generally found unsatisfactory, and was soon displaced by other methods of farming. The chief difficulty with the wage system was its inability to ensure a stable labor force on the plantations, a *sine qua non* of a non-mechanized economy producing staple products and organized into relatively large units. To remedy this defect share-renting and sharecropping were adopted. Wage labor did not disappear entirely, but

[1] This paper is chiefly confined to an analysis of some of the legislation affecting white and Negro share-tenants and sharecroppers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina and South Carolina. It is, therefore, by no means an exhaustive study of the subject.

[2] At the present time there are more white tenants and sharecroppers than Negroes. See *infra*, footnote 6.

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the number of wage workers on the plantations gradually decreased as the share systems grew in importance.[3]

The legal distinctions between sharecropping and share-tenancy are relatively clear. In origin, however, the economic characteristics of the two systems were somewhat vague. When the planter shifted from wage labor to the new methods, no appreciable change took place in the ownership of the land and tools.[4] The freedmen supplied the third factor, labor, but

[3] O. Zeichner, "The Transition from Slave to Free Agricultural Labor in the Southern States", *Agricultural History*, XIII (Jan. 1939); *Report of United States Commissioner of Agriculture for 1867* (Washington, 1868), pp. 416-7; R. P. Brooks, *The Agrarian Revolution in Georgia 1865-1912* (Madison, 1914), pp. 46, 66; C. O. Brannen, *Relation of Land Tenure to Plantation Organization*, United States Department of Agriculture, Department Bulletin No. 1269 (1924), p. 32. On the number of wage workers see Brannen, *op. cit.*, pp. 19-21, 24. Besides regular cash tenancy there were two minor categories of renters, the share-cash tenant who paid his rent partly in cash and partly in a portion of the produce, and the standing renter who paid as rent a stated amount of farm products. For an early description of all these classes see Sir George Campbell, *White and Black* (New York, 1879), p. 149.

[4] The allotment of land to tenants and sharecroppers did not signify the break-up of the old plantation as has been widely but erroneously believed. When a sharecropper received a tract of land, he practically always cultivated it under the close supervision and management of the planter, who, of course, owned the land. When the first statistics on tenancy were published by the federal government in the 1880 census, cropper and tenant farms were considered independent units. The surface result was a decrease in the average number of acres per farm. Although the census officials have since realized the misleading effects of their calculations, they continue to count croppers and tenants as if they were independent operators. United States Department of Agriculture, *Yearbook for 1923*, p. 531; *United States Census of 1920*, V, "Agriculture", p. 14; E. M. Banks, *The Economics of Land Tenure in Georgia* (New York, 1905), p. 34; United States Department of Agriculture, *Atlas of American Agriculture*, Part V, Sec. A (Washington, 1918), pp. 11-12; T. J. Woofter, Jr., *Landlord and Tenant on the Cotton Plantation*, Works Progress Administration, Research Monograph V (Washington, 1936), p. xix and ch. iii; United States Census Bureau, *Plantation Farming in the United States* (Washington, 1916), pp. 7-8; Brooks, *op. cit.*, pp. 48-9, 66; R. S. Baker, *Following the Color Line* (New York, 1908), p. 76. A recent study found that "the plantation system in Louisiana not only survived but also expanded after the Civil War. Between 1860 and 1900 there was a fourfold increase in the number of plantations, while the number of farms was not even doubled." During the same period the number of estates over 500 acres jumped 203 per cent, while the number of small farms of 50 acres and under showed only a 10 per cent increase. R. W. Shugg, "Survival of the Plantation System in Louisiana", *Journal of Southern History*, III (August 1937), pp. 314-5.

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the other two remained under control of the landlord. In return for his labor the former slave received or kept a part of the crop, depending upon whether he was a cropper or tenant. The differences between the two categories were not yet defined in law, nor had they been clearly marked out by custom. Shortly after 1865 an Arkansas planter described the situation aptly when he declared that on twenty nearby plantations there were "ten different styles of contracts."[5] One became a share-tenant or cropper according to the personal agreement, written or verbal, that happened to be made. It was gradually recognized, however, that ownership of a mule and plow by the laborer entitled him to a larger share of the proceeds of production, generally two thirds of the chief crop, cotton. Contracts between such a laborer and the landlord usually considered the former a tenant. On the other hand those who merely supplied their labor received only one half of the crop and were called croppers. Both classes, however, depended upon the landlord or merchant for advances of food and clothing until the crops were harvested. Moreover, when the cropper-landlord relationship obtained, the landlord closely supervised the process of production. Those who furnished their own implements were given more freedom in the management of their planting operations, although they were by no means independent of the landlord's control. Economically the cropper status was evidently closely related to the common wage worker, while share tenancy revealed some resemblances to the ordinary tenant category.

Southern legislatures were slow to define the legal differences between share-tenant and sharecropper, and the courts tardily interpreted the rights and privileges of the new classes of agricultural laborers. Today white sharecroppers and tenants outnumber the Negroes, but in 1865 most of the farm laborers were freedmen.[6] The latter inevitably carried over

[5] J. T. Trowbridge, *The South* (Hartford, 1866), p. 391; see also *Report of United States Commissioner of Agriculture for 1867*, p. 417.

[6] *U. S. Census of Agriculture: 1935*, III, p. 126; Woofter, *op. cit.*, pp. 12-13. It is important, therefore, to note that the discussion below on the status of sharecroppers and tenants applies to both white and Negro farmers in those

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into the new labor systems much of the traditional dependence upon the planter that had marked them as slaves.[7] On the other hand, the planter felt that his relationship to his laborers was a personal matter, and that he should be free to settle all questions affecting it.[8] Even when these attitudes had weakened sufficiently to permit disputes between landlord and laborer to go beyond the limits of the plantation, it must have been an unusual worker who had enough initiative, determination and money to press his claims in court.

When incidents requiring judicial determination reached the courts, the latter relied upon the economic practices and customs of the state in which the issue arose to guide them in making their decisions. Thus the legal status of the southern agricultural laborer mirrors not merely his legal rights

categories. In 1935, 1,202,174 farms were operated by white and 629,301 by Negro tenants of all classes. Of the white tenants 347,848 were croppers; in the same tenure group were 368,408 Negro farmers. Originally, of course, sharecropping was an adjustment of the Negro laborer to the plantation. See *Atlas of American Agriculture*, Part V, Sec. A, p. 12; the governor of Texas stated in 1915 that sharecropping was used chiefly in the old plantation areas, "and largely where the negro population predominates. . . ." *Report of U. S. Commission on Industrial Relations*, IX (1916), p. 8960.

[7] As one former slave put it: "Even atta we was free, the niggers wouldn't believe it. They kept going ter master and mistress atta passes to go off. . . ." C. S. Johnson, *The Shadow of the Plantation* (Chicago, 1934), p. 24. A modern heritage of this carry-over is the disinclination of many planters to use white tenants and croppers because they consider the Negro laborer more docile. See C. Nordhoff, *The Cotton States in the Spring and Summer of 1875* (New York, 1876), pp. 39, 70; *Report of the United States Senate Committee on Education and Labor* (1885), IV, p. 166; A. R. Mangus, *Rural Negro on Relief*, Federal Emergency Relief Administration, Research Bulletin No. H3 (1935), pp. 1-3; W. Peteet, *Farming Credit in Texas*, Texas Agricultural and Mechanical College Extension Bulletin No. B34 (College Station, 1917), pp. 54-5.

[8] H. Hoffsommer, *Landlord-Tenant Relations and Relief in Alabama*, Federal Emergency Relief Administration Research Bulletin, Series II, No. 9 (1935), pp. 4-7; *The Nation*, CIX (1919), p. 716; Johnson, *op. cit.*, p. 127; Woofter, *op. cit.*, ch. iii. The typical views of a planter toward the obligations of his sharecroppers are summarized in the terms of the following contract. Among other things demanded of them, the croppers were required "to be of good moral behavior while on the place, and see that there is no disorderly conduct on said place"; also, "to be respectful to the proprietor, his family, and agent." Quoted in *McCutchen v. Crenshaw*, 40 S. C. 514 (1893).

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and duties, but reflects the actual operation of the agricultural system in the South and the relation of that system to the various classes that make up its working force.[9]

The two categories that required special clarification were sharecropping and share-tenancy.[10] Was the sharecropper a tenant or an ordinary laborer? Was the share-tenant equal to the regular cash tenant as to his rights and privileges with respect to land and crops? Or was he "a mere cropper"? In order to answer these questions the economic characteristics of sharecropping and tenancy were compared, and from these comparisons definitions were drawn. A tenant was recognized to have "dominion over the lands" and to control "the processes of agriculture unhampered by interference on the part of the landlord."[11] When a contract did not clearly convey the land to a lessee, other factors were considered, such as the relative contributions of the parties to production. Where the occupier of the land on a share basis furnished tools and stock besides his own labor, the courts sometimes considered him a tenant paying his rent with a part of the crop. When the individual merely supplied his labor and "was controlled by the landlord", he was "only a cropper", that is, an employee who received as wages a share of the produce.[12]

In Alabama, Arkansas, Louisiana, Mississippi and North Carolina farmers who work the land on sharecrop contracts are considered to be tenants. In the first state this condition obtains when under a share-contract one supplies the land and another the labor, regardless of the other contributions made by the parties to the agreement.[13] In the other states the law

[9] In all probability most of the disputes between planters and their help were settled by local officials. The cases cited in this paper, however, are taken from the records of the courts of higher jurisdiction.

[10] The cash tenant, share-cash tenant, and wage worker presented no legal difficulties. To the first two groups the ordinary rules of tenancy were applied, while the third was taken care of by the provisions in the law dealing with employees.

[11] *Campbell v. Anderson*, 189 Ark. 673 (1934).

[12] See, for example, *Harrison v. Ricks*, 71 N. C. 7 (1874).

[13] *Ala. Code* (1928), par. 8807; *Heaton v. Slaten*, 25 Ala. App. 81 (1932). Before 1923 this rule did not prevail; see *Ala. Code* (1887), I, par. 3064,

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on the matter is not as definite as it is in Alabama, but the landlord-tenant relationship arises whenever the parties to a contract so desire. The law recognizes sharecrop tenancy, but allows the individuals concerned to determine the relationship to exist between them. As the Louisiana Court of Appeals has said: "Contracts by which the owner permits another to cultivate his land in consideration of allowing him a share of the crops are of a personal nature, and, although the law recognizes that lands may be leased for a share of the crop it is generally recognized that under such contracts the person cultivating the land may be merely an employee. . . ." [14] Thus in one situation an individual might be considered a tenant, and in another a cropper, or a worker for a part of the crop, despite the similarity of economic factors in both cases.[15]

The sharecropper has been treated legally as a laborer who works the "land of another for a share of the crop, without obtaining any interest in the land or ownership in the crop

3065; *Code* (1928), par. 8807 and note; *Hudson v. Wright*, 3 Ala. App. 291 (1911).

[14] *Jones v. Dowling*, 12 La. App. 364 (1930).

[15] Share contracts were held to have created the landlord-tenant status in the following cases: *Schlicht v. Callicott*, 76 Miss. 487 (1898); *General Statutes of La.* (1932), II, par. 5065; *La. Farm Bureau v. Clark*, 160 La. 294 (1926). For instances in which the cropper-landlord relationship obtained see *Armstrong v. Bishop*, 151 Miss. 353 (1928); *Holmes v. Payne*, 4 La. App. 345 (1926). Important North Carolina cases are *State v. Burwell*, 63 N. C. 661 (1869); *Harrison v. Ricks*, 71 N. C. 7 (1874); *Jordan v. Bryan*, 103 N. C. 59 (1889); *State v. Austin*, 123 N. C. 749 (1898). In Arkansas the Supreme Court has held that the determining factor hinges upon control of the crop. When a farmer received part of the produce from the landlord for his work he was a sharecropper; when he gave the landlord a share of the crop, it was considered rent, and he was a tenant. *Campbell v. Anderson*, 189 Ark. 671 (1934). The economic distinctions between sharecropping and tenancy seem to have been recognized early in the history of the share systems. In 1870 a question as to one's land tenure was put in this way: "Have you rented lands or do you work on shares?" United States, *Report of Joint Select Committee to Inquire into the Condition of Affairs in the Late Insurrectionary States* (1872), IV, p. 597, hereafter cited as *Ku Klux Testimony*. An English writer noticed in 1879 that under the cropper system the landlord supplied the materials necessary for cultivation and exercised "a general supervision over the culture, giving the laborer a share of the crop rather than taking a share from him." Campbell, *op. cit.*, p. 149.

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before division." This condition is recognized in every state where share-tenancy is a legal status, whenever the landlord writes into the contract the provision that his workers are to be considered croppers and not tenants.[16] Moreover, in Georgia and South Carolina those who cultivate the land on share contracts seem to be classified as croppers.[17]

The legal status of a farmer, who does not possess land, is of great practical importance since it can either create or destroy his control and ownership of the crops. According to the law of tenancy one who is "a tenant has an estate in the land . . . and consequently . . . a right of property in the crops."[18] This right, however, is severely restricted by landlord's lien laws. In those states where share tenancy is recognized the landlord usually has a lien which is paramount to all other claims on the products grown on the rented land. The lien is established to ensure the payment of rent and the return of advances made by the planter to the share tenant to enable him to raise a crop.[19] Beyond this objective, however, the practical effect of the lien laws has been to hand over control of the crops to the landlord, even where the farmer on shares has a theoretical title to the products of his labor on the land. The sharecropper has no right in the crops beyond the mere temporary "possession of a servant." This inter-

[16] For examples see footnote 15.

[17] *Ga. Code* (1933), sec. 61-501; *Appling v. Odum*, 46 Ga. 583 (1872); *Borders v. Herrington*, 165 S. E. 148 (1932); *McCutchen v. Crenshaw*, 40 S. C. 511 (1893); *State v. Sanders*, 52 S. C. 580 (1898); *Lipscomb v. Johnson*, 123 S. C. 44 (1922). A well-known southern scholar has explained this situation on the following basis: ". . . it can be said that South Carolina and Georgia serve as examples of states which have crystallized their legal attitudes towards tenancy on a basis of race. The assumption is that in dealing with lower level tenants the law is dealing with Negroes as a matter of course." R. B. Vance, "Human Factors in the South's Agricultural Readjustment", *Law and Contemporary Problems*, I (1934), p. 268. In view of the fact that today there are almost as many white as Negro cropper farmers, this assumption is no longer true.

[18] *Harrison v. Ricks*, 71 N. C. 10 (1874).

[19] *Ala. Code* (1928), par. 8799; *Heaton v. Slaten*, 25 Ala. App. 81 (1932); *Harris v. State*, 25 Ala. App. 215 (1932); *N. C. Code* (1935), par. 2355; *Miss. Code* (1930), par. 2186, 2187; *Digest of Statutes of Arkansas* (1937), par. 8820, 8846.

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pretation prevails in those states where sharecrop farmers are classified as croppers, and wherever the landlord-cropper relationship is created by personal contract. The sharecropper, though raising and caring for the crop through all the stages of production, is prohibited by law from disposing of it in any way until it is divided and the landlord sets aside a portion of it as the laborer's wages.[20]

These laws and decisions have given the planter control of the produce raised by his sharecroppers and share-tenants. But this control was of little value, if at the same time the laborers could endanger and possibly destroy the crops by their moving around during the agricultural year. Landlords had to be certain that their croppers and tenants would not leave the plantation before all the stages of production were completed; otherwise they faced economic loss and failure. The downfall of wage labor in the first few years after 1865 was chiefly due to the fact that it failed to provide a stable labor supply for the plantations. The disorganization of the labor system that immediately followed the conclusion of the Civil War was complicated by the desire of the former slaves to test their newly-gotten freedom. Many, expecting to receive the land of their old masters, refused to go back to the plantation; those who agreed to work for wages had no interest

[20] *Holmes v. Payne*, 4 La. App. 345 (1926); *DeMoss v. Police Jury of Bossier Parish*, 9 La. App. 215 (1928); *State v. Austin*, 123 N. C. 749 (1898); *Loveless v. Gilliam*, 70 S. C. 391 (1904); *Hardwick v. Page*, 124 S. C. 111 (1922); *Smith v. Williamston Mills*, 136 S. C. 9 (1926); *Ga. Code* (1933), sec. 61-502; *Atlanta Trust Co. v. Oliver-McDonald Co.*, 36 Ga. App. 360 (1927); *Youngblood v. Duncan*, 49 Ga. App. 300 (1934); *Courson v. Land*, 54 Ga. App. 534 (1936). The landlord disposes of the crops and settles the accounts between himself and the laborers. The refusal of the latter to acquiesce in the settlement has frequently led to disputes and sometimes violence. Woofter, *op. cit.*, p. 29; *New York Times*, April 20, 1935, p. 5, col. 2; *Hanson v. Fletcher*, 183 Ga. 858 (1937); *State v. Burwell*, 63 N. C. 661 (1869); *Mattison v. Glenn*, 117 S. C. 404 (1921); *Heaton v. Slaten*, 25 Ala. App. 81 (1932); *Harris v. State*, 25 Ala. App. 215 (1932). *Ku Klux Testimony*, VI, p. 291; VII, pp. 689, 716.

Sharecroppers are usually given a secondary lien on the crop for their share in it. *Digest of Statutes of Arkansas* (1937), par. 8804, 8847; *Code of Laws of S. C.* (1932), par. 8772; *La. Farm Bureau v. Banister*, 3 La. App. 472 (1925).

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in their labor and frequently broke their contracts. Some were attracted by offers of higher wages and moved from one employer to another. Others left their work because it reminded them too much of their experiences as slaves. A large number went to the towns and cities, while not a few quit the plantations because they did not receive any wages or felt that their pay was inadequate.[21]

Cotton growers, however, could not afford to raise a crop unless they knew that their labor force would be on hand for all the needs of the agricultural season. In order to stabilize the labor force the share systems were introduced. Landlords seemed to break up the old plantation when they divided the tillable land among the freedmen, hoping thereby to tie the latter to the farm by a direct bond of economic interest.[22] Furthermore, the gang system which had been carried over into wage labor from slavery was discontinued.[23] In spite of this apparent decentralization of control, management and supervision of the sharecroppers and share-tenants remained with the planters. The difference between labor management under slavery and the share systems was that "instead of standing over the gang of laborers constantly, the owner or his representative now rides from farm to farm, watching the state of the crop, deciding on the method of cultivation, requiring the tenant to keep up the property and above all enforcing

[21] *Report of United States Commissioner of Agriculture for 1867*, pp. 416-7; W. L. Fleming, "Forty Acres and a Mule", *North American Review*, CLXXXII (1906); C. Schurz, *Report on the Condition of the States of South Carolina, Georgia, Alabama, Mississippi, and Louisiana*, Senate Exec. Doc. No. 2, 39th Cong., 1st sess., *passim;* S. Andrews, *The South Since the War* (Boston, 1866), pp. 129, 322-3, 368-9; Brooks, *op. cit.*, pp. 15-7; E. King, *The Great South* (Hartford, 1875), pp. 271, 300, 367; W. Reid, *After the War* (Cincinnati, 1866), p. 569; *De Bow's Review*, New Series, I, March and June 1866, pp. 328, 657.

[22] *Report of United States Commissioner of Agriculture for 1867*, p. 419; Brooks writes with respect to Georgia: "The wage hand was an uncertain factor in that he was liable to disappear on any pay day; the cropper is obliged to stay at least during an entire year or forfeit his profits", *op. cit.*, p. 66.

[23] Brannen, *op. cit.*, p. 43; Reid, *op. cit.*, pp. 485-6; F. B. Leigh, *Ten Years on a Georgia Plantation* (London, 1883), p. 56; *The American Freedman*, I, June 1866, p. 46.

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regularity of work." [24] Although they had been emancipated, most of the freedmen found that their economic condition was not much different from what it had been under slavery. Before 1865 their masters had controlled their labor and provided for their economic needs; under the share systems tenant and cropper remained dependent upon their landlords economically, and continued to cultivate the crops under the close supervision of the planter or his agent.

The latter, however, found that the share systems did not completely eliminate their labor troubles. During the Reconstruction period many of the freedmen left the plantation, often when the crop was in a critical stage of cultivation, to attend political discussions and meetings. A South Carolinian expressed the fears of many planters when he said that the exercise of political rights by their farm hands put the "crops . . . in a state of insecurity, as the negroes might leave at any time." [25] This problem became less important as political conditions were stabilized in the 1870's, but others developed to take its place. These new difficulties stemmed directly from the nature of the share systems.

Before 1865 the planter gave his slaves food and clothing and provided them with the tools and other materials necessary for cotton production. The end of slavery did not sever the Negro's economic dependence upon the planter. The former slaves were now legally free, but they were still laborers and, what was more, had to pay for the supplies they received from the landlord. As white operators lost their independent status, they also had to farm on this basis. "Advances" were issued during the year to both tenants and croppers, and the

[24] Brooks, *op. cit.*, pp. 48-9, 66; see also Baker, *op. cit.*, p. 76; *Atlas of American Agriculture*, Part V, Sec. A., p. 12; Brannen, *op. cit.*, p. 42; Woofter, *op. cit.*, p. 29.

[25] *Ku Klux Testimony*, IV, p. 623. Politics and planter control were intimately related. The close supervision exercised by landlords over their croppers and tenants helped the Democratic party regain its political supremacy. Planters not only determined the economic policies of their laborers, but also their political views. See *ibid.*, VII, pp. 1103, 1173; King, *op. cit.*, pp. 275, 298. For a more recent example see E. V. White and W. E. Leonard, *Studies in Farm Tenancy in Texas*, University of Texas Bulletin No. 21 (Austin, 1915), p. 100.

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cost of this "furnish" plus heavy interest charges was deducted from the proceeds of their share of the crop when it was harvested and sold. At the end of the year the landlord balanced the accounts and announced the result to his laborers. Sometimes there was a money balance due them. Frequently, however, there was none, and often sharecropper and tenant found themselves in debt.[26] To work for an entire year and get nothing but food and clothing was not a strong inducement for the laborers to stay on the land.[27] Complaints were made that if land was rented "to a negro, and if he suspects that his crop is not going to be as good as he anticipated, he will just pick up and quit. . . ." [28] Another reported in the same vein that "often after the laborer has obtained considerable advances on his interest, if the crop promises badly, he leaves without notice. . . ." [29]

The famous vagrancy statutes attempted to stabilize labor conditions on the plantations immediately after 1865. Since these laws have been discussed in detail in most histories of the Reconstruction period they need only be mentioned here. Moreover, the economic emergency that created them was

[26] This condition may be traced from 1865 to the present in the following sources: *Ku Klux Testimony*, VII, p. 702; *Report of the United States Senate Committee on Education and Labor* (1885), IV, p. 811; *Report of United States Industrial Commission* (1901), X, pp. 381, 776, XI, p. 97; Peteet, *Farming Credit in Texas*, pp. 26, 29, 59, 62, 70; *Report of United States Commission on Industrial Relations* (1916), X, pp. 9239, 9240, 9264, 9279; C. S. Johnson, E. E. Embree and W. W. Alexander, *The Collapse of Cotton Tenancy* (Chapel Hill, 1935), pp. 11-2; Johnson, *The Shadow of the Plantation*, pp. 124-8; Hoffsommer, *op. cit.*, p. 12, and tables 5-8; *New York Times*, April 20, 1935, p. 5, col. 2.

[27] Shortly after the Civil War a plantation overseer told Whitelaw Reid that his farm hands might run off "if they knew how deep they had got into us." Reid, *op. cit.*, p. 530.

[28] *Report of United States Senate Committee on Education and Labor* (1885), IV, p. 23.

[29] *Ibid.*, pp. 78-9. The same individual maintained that there was great need for "State legislation . . . that will compel the observance of contracts—laws that will prevent a man from contracting to perform a certain amount of labor for a certain compensation, and then running off whenever he takes the notion, leaving his employer helpless, compelling him in most instances to suffer great loss." See also pp. 30-2, 49, 69.

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ended in a short period of time. The dream of forty acres and a mule was never realized, and under pressure of economic necessity and the prodding of the Freedmen's Bureau, the former slaves went back to work on the farms. Whereas at first it had been necessary to make the laborers return to the plantations, it now became more urgent to make certain that they would work there throughout the entire year.

In order to lessen the danger of their help leaving them in the midst of the growing season, landlords added clauses in agreements with their farm hands providing that the latter were to forfeit all interest in their share of the crop should they quit before the term of the contract expired.[30] Some states, such as Arkansas, Louisiana, North Carolina and South Carolina, support these private agreements by statute. In South Carolina a sharecropper loses his share of the crop if he voluntarily abandons it "without fault on the part of the landlord or without reasonable cause or excuse. . . ."[31] In Louisiana, tenants and croppers are responsible for all damages incurred by the planter "in the amount equal to the market value of the average crop that could have been grown. . . ."[32] In Greene county, North Carolina, it is a misdemeanor punishable by fine of $50 or imprisonment for thirty days for a tenant to break a written rental contract without "just cause and lawful excuse", and become a tenant or cropper on the land of another during the term of the original contract.[33]

[30] For early examples see Leigh, *op. cit.*, p. 115, and contract cited in *Courts v. Happle*, 49 Ala. 257 (1873).

[31] *Salley v. Cox*, 94 S. C. 216 (1912); *Hardwick v. Page*, 124 S. C. 111 (1922); see also *Digest of Statutes of Arkansas* (1937), par. 8842; *Crawford v. Slaten*, 155 Ark. 283 (1922); *Gardner v. Smith*, 39 Ga. App. 224 (1929).

[32] *Gen. Statutes of La.* (1932), III, par. 6604.

[33] *N. C. Code* (1935), par. 4482. In forty-nine counties of the same state, employers who hire a tenant or cropper, knowing that he abandoned a crop "without good cause and before paying for . . . advances" are responsible to the landlord for the amount of the advances and in addition are committing a misdemeanor punishable by maximum fine of $50 or imprisonment for thirty days. *Code*, par. 4480; see also par. 4470. Before 1912 Mississippi had a law which made it a crime for a laborer, renter or sharecropper to break a written contract without securing the landlord's permission, and to

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One of the most important of all the statutes that have been framed to keep agricultural laborers on the plantation for the duration of their contracts is the "false pretense" law. In North Carolina it is a criminal offense, punishable by fine or imprisonment, for anyone to obtain advances "with intent to cheat or defraud . . ." from a person or corporation, and then "willfully fail, without a lawful excuse, to commence or complete such work according to contract. . . ." [34] It constitutes a like violation in twenty-one counties of the state for a tenant or sharecropper to receive supplies from his landlord and then refuse to cultivate the crop or abandon it "without good cause and before paying for such advances." [35] Another statute applicable to forty-nine counties of North Carolina is similar to the one previously mentioned, except that it does not include the refusal to cultivate the crop as an offense.[36] Alabama, Georgia and South Carolina also have "false pretense" laws on the statute books.[37]

The purpose of these regulations is to force plantation croppers, tenants and workers to carry out their labor contracts faithfully and completely under threat of criminal pun-

make another contract without notifying the second employer of the existence of the first agreement. In 1912, however, the Supreme Court of the state declared the law unconstitutional as violating both the constitutions of the federal and state governments with respect to involuntary servitude. The court, however, declared that it was "fully aware of the situation regarding the uncertainty of plantation croppers, tenants, and employees fulfilling their agreements. We can understand how this statute might be very helpful to the successful operation of a planting enterprise. We . . . are in sympathy with their [lawmakers'] effort . . . to make more stable labor conditions on our Mississippi farms. However, over and against this is the more important question of protecting the liberties and rights of the citizen. . . . The citizens who would be liable to prosecution under this statute belong to the class of the humble and poor. Because they are among the weak of our people, it is no less important that they be protected in their rights and liberties." *State v. Armstead*, 103 Miss. 798-9 (1912). In all probability the court was influenced by the decision in *Bailey v. Alabama*, 219 U. S. 219, which had been handed down the year before; see *infra*, p. 425 and footnote 41.

[34] *N. C. Code* (1935), par. 4281.

[35] *Ibid.*, par. 4481.

[36] *Ibid.*, par. 4480.

[37] *Ga. Code* (1933), secs. 26-7408, 26-7409; *S. C. Code of Laws* (1932), par. 1312; *Ala. Code* (1928), par. 4152. See also *infra*, footnote 41.

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ishment.[38] Since it is obviously unconstitutional to make the mere breach of a labor contract a criminal offense, the statutes have been drawn up ostensibly to punish fraud. In 1911, however, the United States Supreme Court declared unconstitutional an Alabama false pretense law on the ground that the practical effect of the statute "was to compel under the sanction of the criminal law the enforcement of the contract for personal service. . . ." This, of course, was contrary to the United States Constitution and special acts of Congress prohibiting peonage or debt slavery.[39] Alabama thereupon revised the law in question by eliminating the section creating a statutory presumption of fraud.[40] In other states the courts gradually changed their views to conform with the decision of the Supreme Court.[41]

[38] The Supreme Court said in *Bailey v. Alabama*, 219 U. S. 245 (1911), that such legislation was "an instrument of compulsion peculiarly effective as against the poor and ignorant, its most likely victims." The economic losses suffered by planters and merchants on the goods supplied to defaulting tenants and croppers are more than made up by the general interest charges on advances. See Brannen, *op. cit.*, pp. 63-4; H. H. Wooten, *Credit Problems of North Carolina Cropper Farmers*, North Carolina Agricultural Experiment Station Bulletin No. 271 (Raleigh, 1930), pp. 21, 23.

[39] *Bailey v. Alabama*, 219 U. S. 219, 237-8 (1911).

[40] *Acts of Ala.*, March 9, 1911, cited in *Ala. Code* (1923), II, par. 4152. This revised statute was upheld by the state court in *Thomas v. State*, 13 Ala. App. 431 (1915).

[41] *Thompson v. Box*, 147 Miss. 14 (1927); see also *supra*, footnote 33; *State v. Oliva*, 144 La. 51 (1918). Despite the fact that the Georgia and North Carolina courts also shaped their decisions in light of the Bailey case, the latest codes of these states contain a provision essentially similar to the Alabama law declared unconstitutional by the Supreme Court in 1911. *Ga. Code* (1933), secs. 26-7408, 26-7409; *N. C. Code* (1935), par. 4281, and law cited in *Bailey v. Alabama*, 219 U. S. 227-8. The North Carolina courts have held that proof of fraudulent intent had to be shown when the advances were originally made and the promise to work given; moreover, that the mere obtaining of advances and later refusal to perform labor did not constitute fraud. *State v. Norman*, 110 N. C. 484 (1892); *State v. Williams*, 150 N. C. 802 (1909); *State v. Griffin*, 154 N. C. 611 (1911); *Minton v. Early*, 183 N. C. 199 (1922). In a recent decision the Georgia Court of Appeals declared that "To make out a prima facie case the State must prove among other things, a definite contract . . . , that the defendant failed to perform the services so contracted for, without good and sufficient cause . . . and that he failed to return the money so advanced, with interest thereon, at the time said

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Complementing the false pretense laws are those prohibiting the "enticing" of croppers, tenants and laborers from their employers. Farm hands might be kept on the plantation by threat of economic loss and legal punishment, but planters still had to eliminate the danger of outside interference with their tenants and croppers. The chief competitors for the cheap and tractable labor supply on the plantations were, first, the industrial enterprises of the North and to a lesser extent those of the South, and, secondly, farm operators, who because of labor shortages or other crises had to secure immediate extra help. In order to eliminate the danger from the first source, some states, notably Alabama, Georgia, Mississippi and South Carolina, have placed prohibitory restrictions upon employment agents who solicit and send labor out of the state. In Alabama all "emigrant agents", as they are usually called, and their assistants, partners and employees are required to pay an annual tax of $5,000 to the state. Each county of the state in which the agent operates can levy an additional tax up to a maximum of $2,500.[42] In Mississippi, labor agents must pay a fee of $500 for each county in which they work.[43] Georgia requires emigrant agents to post a bond acceptable to the Commissioner of Commerce and Labor "conditioned to pay any valid debt" owed by the solicited laborer to a citizen of the state. In addition they are taxed $1,000 for every county in which they carry on business.[44] South Carolina also requires that emigrant agents be licensed by state and county. In both cases the licenses are renewable annually. The state fee is $500 for each county in which labor is solicited, while every county demands $2,000 for the similar privilege within

labor was to be performed, without good and sufficient cause, and all to the loss to the hirer. . . . Mere proof that the defendant failed to carry out the contract does not give rise to a presumption that he did so without good and sufficient cause. . . ." *Banton v. State*, 194 S. E. 827 (1938), and cases cited therein; see also *Horton v. State*, 196 S. E. 241 (1938); *Adams v. State*, 197 S. E. 62 (1938).

[42] *Ala. Code* (1928), par. 696, 697, 3980.

[43] *Miss. Code* (1930), Supplement, Appendix, p. 442.

[44] *Ga. Code* (1933), sec. 92-506; see also sec. 54-9902.

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its jurisdiction.[45] Violations of these provisions in all of the above states are punishable by heavy fine or imprisonment.[46]

In addition to these prohibitive regulations of the emigrant agent business, many states forbid the "enticing" or employment of tenants, sharecroppers and laborers who are already under contract, and whose period of work has not ended. This law extends to all who would attempt to interfere with the plantation force during the agricultural year. Alabama, for example, prohibits one from hiring, employing, enticing or inducing a laborer, servant, sharecropper or tenant under written contract not to exceed one year, to leave his employer before the term of the contract has expired. The law furthermore makes it illegal to persuade or induce or attempt "to persuade or induce any person to abandon a crop he has begun before it is made or gathered, the natural or probable effect of which will be to injure a third person. . . ."[47] Violators of these provisions "must, on conviction, be fined not less than fifty nor more than five hundred dollars", the decision to be made by the jury; but the amount must not be "less than double the damage sustained" by the planter whose croppers or tenants were affected.[48] Arkansas has a similar statute banning interference with renters or laborers under written or verbal contracts. Punishment carries a minimum fine of $25 and a maximum of $500, in addition to liability for all advances owed to the landlord by the enticed laborer, and all damages suffered by the planter from the violation of the contract.[49] Laws prohibiting the enticing of laborers, tenants

[45] *S. C. Code* (1932), par. 1377, 1378.

[46] These have not been the only deterrents to those in the employment agency business. For other methods used to prohibit the labor agent from enticing agricultural laborers, see S. M. Harrison, *Public Employment Offices* (New York, 1924), p. 606; Baker, *op. cit.*, pp. 79-80.

[47] This section was apparently meant to apply to those cases which were not covered by written contracts.

[48] *Ala. Code* (1928), par. 3986, 3987; see also *State v. Nix*, 165 Ala. 126 (1910).

[49] *Digest of Statutes of Arkansas* (1937), par. 8600; see also *Griffin v. State*, 160 Ark. 166 (1923); *State v. Moore*, 166 Ark. 412 (1924).

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and share hands are also in force in Georgia,[50] Louisiana,[51] Mississippi,[52] certain counties of North Carolina,[53] and South Carolina.[54]

These legislative measures and court decisions restored to the landlord legal control of the crops and laborers on the post-Civil War plantation. The lien laws have given the planters control of the agricultural products raised by their share-tenants, while the legal status of the sharecroppers has brought about the same result, more directly, by depriving the cropper of any interest in the proceeds of production beyond a secondary laborer's lien. At the same time the laws dealing with labor contracts, false pretenses, emigrant agents, and the enticing of laborers have assured the planter of legal support in his effort to secure a stable labor supply during the agricultural year. Both categories of statutes reflect the continuation of the plantation system after 1865 and the economic characteristics and needs of that system as it was operated with the new types of agricultural labor that followed slavery.

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[50] *Ga. Code* (1933), secs. 66-9904, 66-9905.

[51] *Gen. Statutes of La.* (1932), II, par. 4384, III, par. 6606; see also *Code of Criminal Procedure* (1932), art. 1291, and *State v. Hunter*, 164 La. 405 (1927).

[52] *Miss. Code* (1930), par. 900. Although the courts have upheld the constitutionality of the statute as a legitimate exercise of the police power, in that it secured "peace and order in the state and the industrial operation or performance of farming and other industrial enterprises . . .", they have had, at times, to warn against interpretations of the law "that would legalize involuntary servitude." *Hill v. Duckworth*, 155 Miss. 491 (1929); *State v. Hurdle*, 113 Miss. 736 (1917); *Hoole v. Dorroh*, 75 Miss. 264 (1897); and *Waldrup v. State*, 154 Miss. 647 (1929).

[53] *N. C. Code* (1935), par. 4481.

[54] *S. C. Code* (1932), par. 1314.

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JUDICIAL SUPREMACY AND THE INFERIOR COURTS IN THE AMERICAN COLONIES

CONSTITUTIONAL historians have scrutinized the isolated assertions of judicial supremacy in the colonial and revolutionary periods, but have sharply divided on accepting them as legitimate precedents. Thus, it has been pointed out that the ruling of Magistrate Symonds in the Massachusetts Bay case of Giddings *v.* Browne (1657) setting aside an administrative order of the town selectmen [1] was in turn reversed by the General Court. Symonds in effect had decided nothing more than that the town authorities had exceeded their powers which had been conferred by the legislature, and, despite his broad dictum regarding fundamental law, the case cannot be fairly considered one involving judicial supremacy over the legislative branch of the government.[2]

It is an historical commonplace that this issue was reputedly raised by James Otis in the writs of assistance case. To Otis was attributed the argument that it was the duty of the courts to annul acts of Parliament "against the constitution and against natural equity." Critics of judicial review have hastened to point out, first, that no legislative act was involved in this celebrated case which actually decided the authority of the courts to grant writs in a particular form, and, second, that the Massachusetts court unanimously approved the issuance of the writs on December 5, 1761.[3] Even Andrew C. McLaughlin, who considers Otis's arguments of first importance, concedes that "the writs were issued after some delay, and we need not

[1] "Hutchinson Papers", Prince Society, *Publications* (Boston, 1865), II, pp. 1-15.

[2] See Louis Boudin, *Government by Judiciary* (New York, 1932), I, Appendix B, pp. 519-26.

[3] Josiah Quincy, *Reports of Cases Argued and Adjudged . . . Province of Massachusetts Bay, 1761-62* (Boston, 1865), Appendix I.

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follow their history."[4] Nevertheless it is clear that Otis was not without support among his contemporaries, for John Adams and other members of the Massachusetts bar made similar claims only a short time later.[5] By not pursuing the writs of assistance controversy beyond the Otis case, proponents of judicial review failed signally to score a palpable hit, but merely emptied their bombracks and turned back to their own lines.

Actually the writs of assistance were legalized by a series of Parliamentary statutes, and in 1767 were specifically authorized for America.[6] Professor Dickerson has recently established the fact that the controversy over the writs of assistance did not end in 1761, but that, as a result of the Townshend Revenue Act of 1767, the writs became a burning issue throughout the colonies. In Rhode Island, Connecticut, New York, Pennsylvania, Maryland, Virginia, Georgia and East Florida the courts refused to issue these writs, specifically authorized under section x of that act. By ruling that the issuance of these writs was "not warranted by law", the courts in these jurisdictions were effectively emasculating an act of Parliament. The Board of Customs Commissioners reported to the Attorney-General that in the opinion of "most of the judges" of the superior courts of judicature in the American colonies it was "unconstitutional to lodge such a Writ in the hands of

[4] *A Constitutional History of the United States* (New York, 1935), p. 28. Professor Corwin in his study of *The Doctrine of Judicial Review* (Princeton, 1914) points out that Otis "soon abandoned his own offspring" (p. 31). For this patriot's amazing career of contradictions, see Ellen E. Brennan, "James Otis: Recreant and Patriot", *New England Quarterly* (1939), XII, 691-725.

[5] Quincy, *Reports*, pp. 198-201. For William Samuel Johnson's implied recognition of judicial review, see L. H. Gipson, *Jared Ingersoll* (New Haven, 1920), pp. 273-75. See also Mason's appeal in Robin *v.* Hardaway, Thomas Jefferson, *Reports of Cases Determined in the General Court of Virginia* (Charlottesville, 1829), p. 109 at p. 114. It is now well established that the claims of Otis and Mason, along with later advocates of judicial supremacy, were based upon a misconstruction of Coke's famous dictum in Dr. Bonham's Case. For recent light on this well-worked subject, see S. E. Thorne, "Dr. Bonham's Case", *Law Quarterly Review* (1938), pp. 543-52.

[6] 12 Car. II, c. 19; 13 & 14 Car. II, c. 11; 7 & 8 Gul. III, c. 22; and 7 Geo. III, c. 46.

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the officer which gave him unlimited power to act under it according to his own arbitrary Discretion." [7] Certainly this impressive group of colonial decisions should lend considerable weight to the view that the doctrine of judicial supremacy had, under the impetus of the political philosophy of the revolutionary era, gained much more ground than recent writers have been willing to admit.

Although failing to exploit fully the writs of assistance cases, proponents of judicial review have found in the records of one inferior court of that period a persuasive precedent—the declaratory judgment of the Court of Hustings of Northampton County, Virginia, of February 11, 1766. That body "unanimously declared it to be their Opinion" that the Stamp Act "did not bind, affect or concern the Inhabitants of this Colony; inasmuch as they conceive the said Act to be unconstitutional." [8] McLaughlin pays tribute to the Northampton case as "the first probably of any court in America and probably in the world to declare an act void because of unconstitutionality." [9] According to William M. Meigs, the fact that a court of minor jurisdiction "announced the opinion that the Act was 'unconstitutional' seems to show that American opinion was deeply infiltrated with this view." [10]

[7] Public Record Office, Treasury I, Bundle 501, cited by O. M. Dickerson, "Writs of Assistance as a Cause of the Revolution", in R. B. Morris (ed.), *The Era of the American Revolution: Studies Inscribed to Evarts Boutell Greene* (New York, 1939), pp. 70-71, *passim*.

[8] Library of Congress transcript. The original is among the hustings court libers (No. 27, 1765-71), at Eastville, Va. See also *Virginia Gazette*, March 21, 1766. Professor Corwin (*op. cit.*, p. 31) erroneously refers to this case as a decision of the "supreme court of the colony", apparently on the basis of a misreading of J. B. McMaster, *History of the People of the United States* (New York, 1900), V, p. 394. This declaration should be considered also in the light of the special authority granted to Northampton County in 1655 to make laws "not repugnant to the Laws of England." Randolph MSS, III, 261. Power to enact laws, limited however to the pursuit and recovery of runaways, was conferred on Gloucester County in 1661. Hening, *Statutes at Large of Virginia*, II, 35.

[9] *Op. cit.*, p. 48 n.

[10] *The Relation of the Judiciary to the Constitution* (New York, 1919), pp. 54, 55.

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Might not the Northampton County case suggest the possibility of other inferior courts exercising judicial supremacy when the situation seemed exigent? The investigator is unlikely to uncover a plethora of decisions in point from the dockets and order books of colonial county courts, and he must be on guard against drawing sweeping inferences from solitary decisions of such minor courts. If he turns back to the period of the Revolution of 1689 in Maryland and, specifically, to the minutes of the Somerset County court, he will be rewarded by an illustration of judicial action, perhaps in some ways more astonishing than that of the Northampton court.

In the fall of 1688 the Maryland legislature passed an act for encouraging the manufacture of linens and woolen cloth. Domestic producers of these articles were to receive bounties and the best grades were to be awarded prizes. Both bounties and prizes were to be distributed by the commissioners of the county courts from revenue obtained by levying an equal assessment upon the inhabitants of the respective counties.[11] At the same session there was also enacted "An Act for Erecting some new necessary towns".[12] Apparently the planters opposed this legislation on the ground that it would draw artisans, servants and landless farm laborers from the plantations. Nevertheless it is also clear that newer elements on the eastern shore, such as the Scotch-Irish, were trying to free themselves from the grip of a speculative one-crop agricultural system and were turning to other sources of livelihood, including the raising of grains and the manufacture of woolens and linen.[13] The planters, however, were better organized, and on April 30, 1689 the "Inhabitants"—in this case, doubtless the freeholders—petitioned the Somerset County court that the aforesaid acts encouraging these other forms of economic enterprise "if possible be disannull'd and made of none effect, as endangering the peace and safety of the county," contributing

[11] *Maryland Archives*, XIII, 220-22.

[12] *Ibid.*, p. 218.

[13] See V. J. Wyckoff, "Ships and Shipping of Seventeenth Century Maryland", *Maryland Historical Magazine*, XXXIV, 273, 274.

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to the ruin of many families, and causing the desertion of many freemen from the county. According to the record, "the court having taken the petition into consideration and seeing the willingness of the inhabitants in general that the act be made void, ordered that the Act made for Encouragemt of English grain as Also Linin and Woolen be made void and of none effect within this County of Sumersett noe advantage to be Taken by any of the inhabitants thereof of one another." [14]

This extraordinary action may be explainable in part as a manifestation of political hostility to the acts of the heated legislative session of 1688 which had been dominated by Joseph, the proprietor's dictatorial emissary. In this connection, it is of interest to note that all nine of the commissioners who had been present at this "County Court for the Laying of the Leavy" of April 30 were selected the following September by the Associators' Assembly to regulate "the Affairs Civill in Somersett County." [15]

The court makes no appeal to the charter, to the laws of England, or to any system of higher law to which colonial legislatures might be subservient. Technically the court had met in an administrative capacity—to levy an assessment. But any artificial dichotomy between judicial and administrative business would clearly be foreign to the nature and proceedings of county courts in this period. Although the Somerset court's action cannot serve as a precedent for judicial review strictly construed, it does represent an instance of unchallenged judicial supremacy. In its way it is unique, for a similar action cannot be found in any other Maryland county court of this period, and it is without parallel in the proceedings of the Provincial Court.[16] The possibility that it may have been in-

[14] Somerset County court liber, A. W., 1687-89, 1690-91, f. 103vso.

[15] *Maryland Archives*, XIII, 244.

[16] In addition to the Somerset County court records at Princess Anne, the writer examined all other known Maryland minute books for this period, including: Cecil County, Lib. 1683-92; Baltimore County, Lib. D, 1682-86; F, No. 1, 1691-93; Charles County, Lib. P, No. 1, 1688-89; Lib. Q, No. 1, 1689-92; Lib. R, No. 1, 1690-92; Talbot County, Lib. NN, No. 6, 1685-92; Provincial Court Libers, 1682-1702, 1688-89.

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spired by political, economic or class considerations would hardly make it any the less significant for students of constitutional history.

The actions of the Maryland county court of Somerset in 1689 and of the Hustings of Northampton County, Virginia, in 1766, together with the important group of cases arising in the higher courts in the colonies after 1767 in connection with the issuance of writs of assistance, would serve to indicate that in times of great stress judicial supremacy was invoked over legislative actions, either Parliamentary or colonial in origin. Both the instances of judicial supremacy exercised over colonial laws by the King in Council and the so-called "phantom precedents" of judicial review during the "critical period" aroused intense public opposition. On the other hand, the Somerset and Northampton cases were clearly a reflection of the popular temper, or at least of groups controlling public opinion. The courts were on the popular side in 1689 and again in 1766. In both periods they were instruments of revolutionary action. From this it might be inferred that the colonists were not opposed in principal to judicial supremacy but rather to its exercise in derogation of colonial interests. Judicial supremacy was a two-headed Janus even in colonial times.

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VEBLEN'S "IMPERIAL GERMANY AND THE INDUSTRIAL REVOLUTION" *

OF all the men who prior to the Great War studied the forces growing out of heredity, custom, anthropology, statecraft and economics in an effort to project a trend, Veblen was one of the most successful. He had in him the prejudices of an educated Norwegian farmer who feels that he is as good as anyone but has nevertheless been preyed upon by the citizens of the nearby small towns who have unfairly used against him their superior knowledge of law, politics and American customs. This slight and perhaps justified bias on the part of Veblen did not interfere in any material way with the brilliance of his analysis twenty-five years ago of the trend in such nations as Germany, England, the United States and Japan.

His book *Imperial Germany and the Industrial Revolution* [1] was projected before August of 1914, and the writing was hastily completed in late 1914 and the first month or two of 1915. Apparently Veblen added a few penciled footnotes to the proof sheets in April of 1915. I read the book when it first came out in 1915 and have reread it again in March of 1940. As a result I want to give it as my considered opinion that the book has fully as great significance in the present world situation as the devastating criticisms made of Hitler by Rauschning. The man who reads both Veblen and Rauschning will have his perspectives greatly deepened and sharpened. Only by having both points of view in mind can we deal sensibly with the Germany of today.

Veblen's study is probably the most acute analysis of modern Germany which has ever been written; yet strangely enough the Solicitor of the Post Office Department of the United States denied to the book *Imperial Germany* mailing privileges while the United States was in the Great War. The Post Office Department in that

* This review article, except for minor typographical changes, is printed exactly as Secretary Wallace wrote it in early March. The Secretary believes it is a rather remarkable confirmation of the soundness of Veblen's fundamental analysis that the striking events since March of this year should not have made it necessary to alter any part of the review.—ED.

[1] *Imperial Germany and the Industrial Revolution*, by Thorstein Veblen. With an introduction by Joseph Dorfman. New York, The Viking Press, 1939. xxi, 343 pp. $3.00.

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day apparently was unable to appreciate that Veblen's book was a harder blow at Germany for the very reason that it was fair, objective and did not say a single word against Germany.

The Veblenian thesis with regard to Germany is roughly as follows: The hybrid people of Germany by heredity in any given degree of latitude are about the same as the people in a corresponding degree of latitude in any of the adjoining countries. From England to St. Petersburg the people at birth have about the same characteristics. Those of us who are well acquainted with the Germans of the third and fourth generation in the United States know that Veblen is substantially right. As a geneticist I am convinced he is right. Most, though perhaps not all, of the anthropologists will agree with him. There is no basis whatsoever for the myth that the Germans by heredity are a superior race.

Whence, then, comes their reputed superiority in certain matters of science, technology and military capacity? In developing his thesis along this line Veblen spends most of his energies contrasting Germany with England. Politically and technologically, England is far more mature than Germany. Germany was living in the spirit of the Middle Ages until the second quarter of the nineteenth century, and she didn't really wake up until 1870. She then found ready to her hands a system which England and, to a lesser extent, France had already worked out. But in taking over the technological system, she had all the advantages which are enjoyed by a manufacturer who is constructing a new plant. The Germans, therefore, promptly became more efficient than the British in many fields of endeavor. But the most notable advantage existed because of the high sense of duty of the German people and the fact that they had become accustomed to a frugal standard of living and did not expect much. The British system had accumulated a lot of sand in the bearings and the most notable handicap of all was the British gentleman and his expensive, irrelevant habits. Veblen's irony with regard to British sport is really priceless. Here we see the Norwegian farm boy turned professor abhorring the waste of the upper classes and yet under the necessity of holding on to his job as a professor, bitterly in earnest and enjoying himself in the following words:

> Sport, on the scale, and with the circumstance attending its cultivation in the United Kingdom, can not be incorporated in the workday scheme of life except at the cost of long and persistent training of the popular taste. It is not to be done by a brusque move. It is quite beyond the reach of imagination that any adult male citizen would of his own

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> motion go in for the elaborate futilities of British shooting or horse-racing, *e. g.*, or for such a *tour de force* of inanity as polo, or mountain climbing, or expeditions after big game. The deadening of the sense of proportion implied in addiction to this round of infantile make-believe is not to be achieved in one generation; it needs to have all the authenticity that tradition can give it, and then its inculcation in the incoming generation must be begun in infancy and followed up throughout the educational system. Nor would it all be tolerated by popular sentiment if it were not that popular sentiment has gradually been bent to the same bias by slow habituation. Yet so far has the habituation done its work that the community at large not only tolerates these things, but all this superfluity of inanities has in the course of time been worked into the British conception of what is right, good and necessary to civilised life (pp. 142-3).

Veblen goes on to say that sports have bent the British population

> in the direction of trivial emulative exploits and away from that ready discrimination in matters of fact that constitutes the spiritual ground of modern technological proficiency. It is not so much that this pervasion of the British population by sportsmanlike preoccupations wastes the products and the energies of the industrial system, as that it perverts the sources from which the efficiency of the industrial system is to come. Its high consequence as a means of destruction lies in its burning the candle at both ends. Again it is to be noted that the generation and establishment of such a pervasive and stubborn habitual bent takes time, and that to get rid of it would also require time, stress and experience (pp. 148-9).
>
> . . . gentlemen commonly have no industrial value. Indeed, as bears on the net industrial efficiency of the community they have appreciably less than no value, being typically unproductive consumers (p. 277).

In the normal course of events, the Germans in a few more generations would have taken on most of the wasteful habits of the British. Their workmen would have gradually become infected with the same ideas with regard to "freedom and insubordination" as among the British. Financiers would gradually have taken the place of technological experts at the head of German industrial enterprises. Political graft would have siphoned off some of the efficiency. The women would no longer work in the fields and the Germans, like the British, would then be occupying their minds with matters that are worse than useless for the purposes of industry. In 1914, however, Veblen felt that the English gentleman of the better sort still cost several times as much as the corresponding German gentleman. In view of the hereditary identity of the English with the Germans, Veblen felt, however, that it would not take the German gentleman

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long to become as useless as his British compeer. Unless accidents came into the picture, Veblen anticipated that the disposable margin between the industrial output and the current consumption in Germany might be expected shortly to disappear.

The attention is then turned to the Hohenzollerns and the Dynastic State. Remarks along this line apply just as well today as they did twenty-five years ago, if the word "Hitler" is substituted for "Hohenzollerns" and the words "Nazi State" are substituted for "Dynastic State". The imperialistic Dynastic State can live only as long as the people are imbued with romantic philosophies of the prescientific period. The fundamental doctrine is, of course, that each individual lives only for the State and that he serves it with his utmost in order to make its warlike enterprises successful. Veblen freely admits that German imperialism from nearly every point of view has been more successful than any other, with the possible exception of the Japanese. But he does not think that this success has been due in any way to the superior heredity of the Germans. The relative freedom from graft and inefficiency in Germany has resulted merely from the accident of German bureaucratic imperialism having been built up in rather recent times. Translating from Veblen's rather obscure language, I get the following: Give the Germans time and their imperialistic bureaucratic system will be as full of graft as the Russian, the Turkish or the Persian and as stale as the Austrian. We must admit, of course, that the German bureaucracy, due to certain accidents which Veblen foresaw might come to pass, has not today in 1940 taken on all of the inefficiencies and graft which Veblen anticipated would come to pass. Veblen's broad analysis would make room for all of this, and I am sure he would have been among the first to admit that he could easily be wrong on the time factor. The precise words of Veblen are interesting:

> What may be the rate of growth and the final degree of such senescence to be looked for in the Prussian-Imperial bureaucracy is of course only a matter for conjecture, at the best; but its extreme volume, comprehensiveness and elaboration would suggest that something very appreciable in that way is fairly within the probabilities, since this state of things leaves relatively little of German life outside the sweep of the bureaucratic system, and so affords little purchase for any combination of forces that might conceivably hinder its perfect decrepitude (pp. 234-5).

And then Veblen puts in the following footnote, "It is true, the present (April 1915) conjuncture may so turn that speculations as to the future of the Imperial bureaucratic system will have little

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more than speculative interest." If Rauschning is correct the Nazi Germans of the late 1930's had already acquired a considerable amount of the graft foreseen by Veblen in 1914.

Any nation whose people have the education to do a first-class job of building up a good standard of living out of science and technology will inevitably repudiate autocratic and dynastic institutions. War is the chief force which can delay that outcome.

It is good to read the eighth chapter of Veblen's book to refresh our minds as to the extent to which war had been worshipped, prior to 1915, as the ultimate purpose of the German Reich. The key economic policies in times of peace were directed toward the ultimate eventuality of war. The tariff was used deliberately as a weapon of economic warfare. Long prior to 1915 Germany set out on the path to encourage her people to produce as nearly as possible everything at home even though the cost might be much greater than importing from abroad. An especial effort was put forth to enable the German farmers to produce for the German market so that imports of agricultural products could be confined as nearly as possible to nearby nations. Railroads, roads and a merchant marine were constructed with war in mind. Great educational and propagandistic efforts were put forth long before the Great War to prevent the German people from asking, "What do we get out of all this?" The press was censored and education was distorted. The powers of the police and the courts were freely used. The Gestapo is not something new under the sun; it is merely a perfecting of that with which the Germans were quite familiar prior to 1915. In 1914, as today, most of the Germans looked on the British, the American and the French attitude toward free institutions as sheer foolishness. The Prussian Imperial State and more recently the Nazi State have both been so successful in fostering a united military spirit that it is easy to see how the Germans might temporarily fool themselves.

Veblen is confident of the ultimate downfall of the Prussian war machine, saying:

> it has been the usual fortune of military establishments and warlike class organisations presently to fall into a certain state of moral decay, whereby rank, routine, perquisites and intemperate dissipation come to engage the best attention of the specialists in war. Like other works of use and wont this maturing of the warlike establishment takes time, and the corps of war specialists under the Imperial auspices has not yet had time to work out the manifest destiny of warlike establishments in this respect; although it may be admitted that "irregularities" of the kind alluded to have by no means been altogether wanting. The corrosion of military

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> use and wont, in the way of routine, subordination, arrogance, indolence and dissipation, has perhaps gone so far as would unfit this picked body of men for the duties of citizenship under any but an autocratic government, but they have probably suffered no appreciable impairment in respect of their serviceability for war and its advocacy (p. 254).

Veblen knew enough about the Prussian universities of the pre-war period to realize that there would be a continuing effort to bend the mind of the on-coming generation in the direction of believing that war is a supreme good. The qualities which are brought to the surface by a warlike power which glories in its strength are—coercion, personal dominion, self-abasement, subjection, loyalty, suspicion, duplicity and ill will. The attitude of the warlike establishment, whether it be illustrated by the Elizabethan gentleman soldier, the Spanish conquistador, or the Prussian imperial statesman, is, so far as weaker nations are concerned, the moral attitude of the pot-hunter toward fur-bearing animals. Veblen observes in one of his footnotes that "One does not keep faith with the fur-bearing animals."

It has always been exceedingly difficult for the people of the United States since 1870 to size up Germany correctly, because we have so many excellent people of German ancestry among us, people who represent a fine home life, industry, decency, and in many cases an unusual appreciation of the arts. The Germany of Goethe, Kant, Beethoven and Heine has always commanded American affection. Even the experience of the World War has scarcely disabused our minds. The American people like the Germans who live in the United States. But if Veblen were living today he would almost certainly look on Hitler merely as the current expression and extension of the pre-war Prussian imperial spirit. The German people of the United States for the most part are descended from the men who, when they left Germany, either had no knowledge of the Prussian imperial spirit or actually were fleeing from it. German-Americans who prior to 1917 sympathized with Germany, and who at the present time are sympathizing, are in most cases not familiar in the slightest with what has happened to Germany in the past eighty years. In saying this I do not want to imply moral censure of any nation. So far as diplomatic prevarication and duplicity is concerned there is no reason for not agreeing with Veblen that under like circumstances and provocation many other nations would be able to give just as good an account of themselves as the Germans.

Veblen apparently uses the word "provocation" so far as Germany is concerned with the idea in mind that Germany even in 1914

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felt that her time of a special advantage was short. From her own particular point of view she should have struck in 1912 instead of waiting two years. Veblen in early 1915 apparently overrated Russia; at any rate he takes the Germans to task for not rating the eventual economic and military organization of Russia high enough.

I have never read anything of Veblen's in which the thought was not rather deeply buried with a multiplicity of ironic, scholarly words somewhat difficult to understand. Just what the real man thought, I do not know, and perhaps no one knows. Probably he was more anarchistic than socialistic in his thinking. He believed our minds and bodies were evolved under rather small farm and village conditions, and that Germans, Englishmen, Frenchmen, Americans and western Russians would all be happiest in living under those conditions. With German heredity as it is, and with modern technology of necessity sooner or later destroying the base for Prussian imperialism, he could see no outcome in the long run other than a breakdown of German autocracy. The same would apply to Japanese autocracy, because Veblen believed that the modern Japanese state was essentially similar to the German state and that the Japanese statesmen were perhaps "even more shrewd, more callous, and more watchful in their practice of unashamed statecraft."

Veblen is almost as critical of the United States as he is of lands overseas, feeling that the American business man has proved himself notably inferior to his German compeer. In his supplementary note No. 4 he has taken the hide off the American business man as typically a real estate promoter, politician and financier. He believes that less than half as much has been produced by the American business machine as could be produced. Describing the qualities of a successful American business man he says:

> To survive, in the business sense of the word, he must prove himself a serviceable member of this gild of municipal diplomats who patiently wait on the chance of getting something for nothing; and he can enter this gild of waiters on the still-born increase, only through such apprenticeship as will prove his fitness. To be acceptable he must be reliable, conciliatory, conservative, secretive, patient and prehensile. The capacities that make the outcome and that characterise this gild of self-made business men are cupidity, prudence, and chicane,—the greatest of these, and the one that chiefly gives its tone to this business life, is prudence. And indispensable among the qualities that command that confidence of his associates without which no man can make himself as a business man, is a conservative temper (p. 336).
>
> America is the land of unlimited possibilities, it is believed, both in respect of material resources and in respect of inventive genius. But it

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> is a notorious commonplace that the mechanical inventions which have in a sense made America what it is in the industrial respect have not only not been made by the business men—they are astute and conservative pecuniary strategists, with neither insight nor aptitude in technological matters—but have also not been made with their support. . . . And connected with this selective bidding up of pecuniary astuteness and quietism is the well-known inefficiency of business management in American industry,—well-known among men competent to speak on these matters, though not well credited among the business men at large, who commonly lack even the degree of technological insight necessary to appreciate the pecuniary loss involved in their own astute mismanagement (pp. 337-8).

Comparing the United States with Germany and taking into account the very great American advantages in resources, he reaches the conclusion that "the American achievement in this field within the same period has been notoriously less conspicuous and less substantial, *e. g.*, than that of Germany since the formation of the Empire" (p. 338).

Veblen then goes on to comment on the abuses committed in the name of industry by financial people interested in stock jobbing, which he calls "large-scale strategy for the interception of the 'rake-off'".

I have the feeling that one of the motives animating Veblen in writing *Imperial Germany* was to have another chance to take a well-concealed but somewhat effective poke at one of his pet abhorrences, the American business man. During the period between the Civil War and the Great War, the Scandinavian farmers of the Northwest were suspicious of the practices of small-town business men. They were not familiar with the language or the legal customs and undoubtedly many of them felt they had been cheated. Moreover during the time Veblen was on the farm, prices were continually going down and most of his neighbors doubtless felt the trouble was largely due to manipulation in the cities. While Veblen himself was too wise to share superficial delusions, his philosophy must have found its origin in some measure in this background. As a Norwegian farm boy attending college with the sons and daughters of the local business men, he was oftentimes ill at ease because of his farmer-like clothes. Out of this psychological situation no doubt came his ever-recurring phrase, "wasteful conspicuous consumption". Veblen's animus, even though somewhat unfair, played undoubtedly a great part in unleashing his genius. Unfortunately Veblen rarely tries to find a constructive solution. He is satisfied for the most part with analysis, most of which is remarkably accurate. Frankly, I

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think there is more possibility of good in the American business man than Veblen would care to admit. Since 1915 many of our business men have shown a willingness to throw exceedingly large sums of money into scientific research. Involuntarily, perhaps, they have cleaned up many of the abuses of stock jobbing. In spite of the rather terrible inefficiencies of our economic system we have made progress in devising a great variety of machinery to raise the standard of living. While most of the Veblenian criticisms of our business economy still remain valid, we can find little suggestion in Veblen's works as to what to do to cure the situation. Some of his writings would lead us to think that he believed in returning our business and our way of life to the village. But with the Germans and Japanese actively pushing we cannot help wondering if the so-called democratic nations can be saved merely by following a program of breaking up large corporations and returning the economy to small business operations. It may all be true that our minds and bodies were evolved under simple conditions and will eventually have to return to simple conditions. In the meantime it would seem to me that Veblen's own analysis of Germany and Japan would indicate that we in the United States must strain every nerve to make our democracy efficient while at the same time we do not abandon it.[2]

No one can read Veblen's *Imperial Germany* without realizing in a perfectly dispassionate way that the German war machine at the present time must be psychologically very strong. The strength is derived only superficially from Hitler. It has its roots in several generations of systematic imperial Prussian military indoctrination. More recently the German strength is derived from a tremendous concentration of industrial power first in huge cartels, and later under Schacht, and Hitler. This situation is probably temporary (perhaps one year—perhaps thirty) and the outstanding question is

[2] Friends who have read Veblen's works more extensively than I tell me that he had a strong appreciation, as exemplified in his *Theory of Business Enterprise,* of the unworkability of small-scale competitive business enterprise under modern technology. While he had no patience with the building up of great trusts purely on a financial basis, he did realize that modern machine technology had rendered obsolete the ancient small order of things. It may be, therefore, that my emphasis on Veblen's homesickness for the village and farm economy is not completely warranted. His researches in anthropology led him in that direction but his appreciation of modern technology led him to understand the need for bringing rapidly and continuously up to date the customs and institutions based on a small-scale economy in order that modern civilization might not destroy itself.

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as to what will happen to the rest of the world when and if Germany smashes. Also there is the question of how far the other nations will have to go in imposing economic controls during the period while imperialistic Nazi Germany continues with the system now in effect.

Nothing that has occurred in the last twenty-five years tends to cast any serious doubt on the correctness of Veblen's penetrating analysis. If, however, his basic thought should prove to be wrong and if Germany should display an ability to maintain for several generations a high degree of economic efficiency as well as a capacity for military enterprise in an extreme form, then the entire world, including *this hemisphere*, would be confronted with a situation fraught with difficulty, danger, and the possibility of ultimate tragedy.

On the other hand, there appears to be nothing peculiarly inherent in the German mind (as distinct from the Prussian tradition) that would make it impossible for the people of Germany to exorcise the evil spirit of militant imperialism. Should that occur, Germany could become a valuable asset to the family of nations and a powerful factor in economic and social progress.

* * * * * *

After I finished this review, I became possessed with a great desire to take a fresh look at Veblen's work, *The Nature of Peace*, which I had read twenty years ago but had forgotten. This book which was published in early 1917 before the United States entered the war is just as remarkable in its prophetic insight as the volume on Germany. Curiously enough when I opened the book, the first passage on which my eye fell was one dealing with the requisites of a league of nations. The passage follows:

> It is true, the more genial spokesmen of the project are given to the view that what is to come of it all is a comity of neutral nations, amicably adjusting their own relations among themselves in a spirit of peace and good-will. But this view is over-sanguine, in that it overlooks the point that into this prospective comity of nations Imperial Germany (and Imperial Japan) fit like a drunken savage with a machine gun. It also overlooks the patent fatality that these two are bound to come into a coalition at the next turn, with whatever outside and subsidiary resources they can draw on; provided only that a reasonable opening for further enterprise presents itself.

Veblen in *The Nature of Peace* gives evidence of having studied the shorter catechism when he speaks cynically of the British gentleman-investors as being men of blameless propriety whose place it is

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"to glorify God and enjoy him forever" whereas the function of the German gentleman-adventurers of prowess and proud words is "to glorify God and disturb the peace." In no sense is Veblen pro-British. But he is convinced that the British gentlemen are reaching the end of their rope and that the ruthlessness of the Germans and Japanese in utilizing modern technology in a factual instead of a gentlemanly wasteful manner will force the whole world to face certain eventualities.

If Veblen were writing today, he would doubtless make a number of changes in his analysis. And yet in the main his understanding of the trend of economic and political events is so profound that his two books *Imperial Germany* and *The Nature of Peace* should be required reading for the statesmen of all the democratic countries of the world. They cannot afford to make at the time the next peace comes the same errors that were made in 1919 and the early 1920's.

Veblen is verily a modern Isaiah and as such is without sufficient esteem in his own land.

HENRY A. WALLACE

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BLAND'S "GOVERNMENT IN AUSTRALIA"

THE few Americans who have, at one time or another, published monographs on Australian subjects have rarely made Australian studies a matter of continuing interest. Perhaps the lack of demand for their knowledge has prevented them from increasing it, but of almost equal importance is the difficulty of coming by the necessary data in America. Many fields of knowledge are almost unexplored in Australia. Take government. In his preface to *Government in Australia*[1] Professor Bland remarks:

> A handicap under which students of Public Administration in Australia labor is the absence of text books and general works of reference dealing with local political systems and governmental methods. Biographies, memoirs, handbooks, and political studies, revealing the springs of political action and describing the mechanism of government abound in other countries. Here, similar information must be sought in the pages of reports of Royal Commissions of Inquiry and of other statutory bodies.

Because of this situation Professor Bland (who is, by the way, the only professor in his field in all of Australia) has not at this time attempted an analytic and descriptive survey of government in Australia. He has rather chosen to bring together a collection of extracts from public documents, most of which are now difficult to obtain in single copies for individual use; and he has chiefly limited his extracts to those which give light on "the machinery of public administration." Of necessity, however, many of the extracts also contain information on other matters, but the emphasis is as Professor Bland defines it.

It seems to me that it would serve no very useful purpose to attempt a close summary of this material. Rather it is proposed here to present a series of bibliographical notes, the idea being that Professor Bland's compilation cannot be used with complete profit by American students unless they approach it with some knowledge of the background. This will be followed by a generalized discussion of the problems of government in Australia.

[1] *Government in Australia: Selected Readings.* 4 volumes. Edited by F. A. Bland, Professor of Public Administration, University of Sydney, N. S. W. Sydney, The Government Printer, 1939. Price, 15 shillings the set. (The books are mimeographed.)

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Probably because Professor Bland compiled these volumes chiefly for use in Australia he did not attempt to present a general introductory bibliography. His bibliography, given at the end of vol. IV, merely lists the reports from which extracts were taken. The notes below are not intended as an exhaustive survey of the field, limited though Professor Bland correctly says it is. They do not include a list of the many valuable articles which have been written. But they do point out some of the more important and more readily available materials which seem directly related to the general problem of government. They are designed to suggest background reading for *Government in Australia.*

GENERAL

POLITICAL HISTORIES. Almost any history of Australia contains information on past politics, even those with an economic emphasis. It is difficult to draw a line between economics and politics and in Australia the difficulty is more acute than in this country, for government policy is often the determining factor in economic affairs. *The Cambridge History of the British Empire*, vol. VII, Part I, deals with Australia. A very short survey of the Australian background which illuminates politics is Portus, G. V., *Australia: An Economic Survey* (Sydney, 1933). The following books are more strictly political in content: Bernays, C. A., *Queensland Politics During Sixty Years* (Brisbane, 1919); Bernays, C. A., *Our Seventh Political Decade* (Sydney, 1933); Smith, A. N., *Thirty Years: The Commonwealth of Australia, 1901-1931* (Melbourne, 1933); Childs, V. G., *How Labour Governs* (London, 1923); Duncan, W. G. K., editor, *Trends in Australian Politics* (Sydney, 1935).

BIOGRAPHIES AND AUTOBIOGRAPHIES. Parkes, Sir Henry, *Fifty Years in the Making of Australian History* (London, 1892); Lyne, C. E., *Life of Sir Henry Parkes* (Sydney, 1896); Melbourne, A. C. V., *William Charles Wentworth* (Brisbane, 1934); Murdoch, W., *Alfred Deakin* (London, 1923); Morris, E. E., *George Higinbotham* (London, 1895); Palmer, N., *Henry Bournes Higgins* (London, 1931); Pratt, A., *David Syme* (London, 1908); Reid, Sir G. H., *My Reminiscences* (London, 1917); Sugden, E. H., and Eggleston, F. W., *George Swinburne* (Sydney, 1931). (The first biography of a Labor Party leader will shortly appear: Evatt, H. V., *W. A. Holman*, to be published in Sydney, 1940.)

HANDBOOKS. Binns, K., editor, *Parliamentary Handbook and Record of Elections* (Canberra, 1938); *Australian Legislative Digest*, published each year by the state of New South Wales.

MAGAZINES. Articles on politics, political issues, and problems of government appear in great numbers in the Australian press, but special attention may profitably be directed to *The Economic Record* (1926 *et seq.*) and *The Australian Quarterly* (1929 *et seq.*), for the general writing is ordinarily partisan or directed toward day-to-day matters. The magazines mentioned, on the other hand, contain material of a more substantial character.

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PUBLIC SERVICE

Bland, F. A., *Shadows and Realities of Government* (Sydney, 1923); Bland, F. A., *Planning the Modern State* (Sydney, 1934); *Public Administration*, the Journal of the Institute of Public Administration, New South Wales Regional Group (1937 *et seq.*). An interesting article is "The Judiciary and Administrative Law in Australia" by Mr. Justice H. V. Evatt of the High Court of Australia, *The Canadian Bar Review*, April 1937.

CONSTITUTIONAL

Quick, John, and Garran, Robert R., *The Annotated Constitution of the Australian Commonwealth* (Sydney, 1901); Moore, W. Harrison, *The Constitution of the Commonwealth of Australia* (second ed., Melbourne, 1910); Cramp, K. R., *The State and Federal Constitutions of Australia* (Sydney, 1914); Holman, W. A., *The Australian Constitution* (Sydney, 1928); Knowles, G. S., *The Commonwealth of Australia Constitution Act (As Altered to 1st July, 1936)* (Canberra, 1937); Portus, G. V., editor, *Studies in the Australian Constitution* (Sydney, 1933). A recent article of great value is Evatt, H. V., "Constitutional Interpretation in Australia", *University of Toronto Law Journal*, vol. III, No. 1, 1939.

To the best of my knowledge, there is no book on federal-state relationships in Australia, but valuable information is contained in the *Reports* of the Commonwealth Grants Commission, the first of which appeared in 1934.

On new states, there is Ellis, U. R., *New Australian States* (Sydney, 1933) but it must be used with caution.

LOCAL GOVERNMENT

The sole general treatise on local government is Knibbs, G. H., *Local Government in Australia* (Melbourne, 1919). See also Bertie, C. H., *The Early History of Sydney Municipal Council* (Sydney, 1911).

BUDGET

Bland, F. A., *Budget Control: An Introduction to the System of New South Wales* (Sydney, 1936).

BUSINESS UNDERTAKINGS

Eggleston, F. W., *State Socialism in Victoria* (London, 1932), a work in which the terms of reference for the criticism offered must be carefully observed.

SOCIAL SERVICES

Duncan, W. G. K., editor, *Social Services in Australia* (Sydney, 1939).

INDUSTRIAL ARBITRATION

Anderson, G. W., *Fixation of Wages in Australia* (Melbourne, 1929) is the standard work, but the literature on this topic is very extensive and well known abroad. The classic statement of the case for arbitration courts is Higgins, H. B., *A New Province for Law and Order* (Sydney, 1922). On the basic idea behind the determination of wages, see Eggleston, F. W., editor, *Australian Standards of Living* (Melbourne, 1939).

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Reverting to Professor Bland's extracts, one can deduce from them some of the outstanding problems of government in Australia. Since the scope of state activity is very wide, it is naturally imperative that high standards obtain in the public service. The struggle for standards and the struggle to improve them are vividly presented. The Australian public service began by taking over the standards of the English service as it was before the era of reform. Australia lagged behind England in applying the principles evolved by the reformers, but in due course the most important of these were adopted, though the older conceptions died hard. In 1901 the Commonwealth began at about the point reached by the most advanced states. It appears that at one time or another the laws on the books have been better than the practices in the offices. An especially popular dodge for escaping the burdens of exacting standards of fitness has been to appoint men temporarily and keep them on permanently. This enables the politicians to ladle out the spoils of office and it also enables the appointees to escape the competitive examinations. This latter device has been central in the Australian struggle to improve standards; but there is still room for improvement. At present there is much discussion of how to recruit university graduates at levels of salary and responsibility commensurate with their advanced educational attainments without prejudicing too strongly the position of men who have worked their way up from the bottom.

The aspiration of the reformers is to raise the standards inside the service by making examinations a preliminary to promotion. Related to this is the desire to make promotion rest on merit rather than seniority. For these reasons many efforts have been made to facilitate the taking of training courses by the men in the service, either in "institutes" established within the departments or in certified outside institutions. It is evident, not only from the extracts given here but also from the writer's observations in Australia, that those interested in the highest possible standards still have much to do. Progress continues, for Professor Bland gives as one reason for publishing his source book the fact that "the Public Service Board of New South Wales has recently revised its examination syllabus for officers desiring to secure eligibility for admission to the Higher Grades of the Administrative Division of the Public Service."

The Australian public service is highly unionized, like the general body of the working class. The activities of the public service unions naturally are a concern to those in charge. Several of Professor Bland's extracts have to do with this matter; and it would have strengthened the compilation if it included extracts from the con-

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vention proceedings of the unions. Another "outside" influence is that of the arbitration courts to which the public servants have access. The courts determine wages and, to some extent, conditions of work. Their "awards" conflict with one another to the complete disruption of planned salary scales and systems of classification. From the material presented, it will be clear to American students that these influences are not entirely stabilizing forces.

There is in Australia as everywhere else in the world the age-old struggle between bureaucracy and freedom. There is, too, the equally ancient struggle to strike a balance between "business methods" and the requirements imposed on public servants as employees of a parliamentary government. The Australians have not settled these problems, but they have given much thought to them. Professor Bland is able to quote some very wise words on both of them. But the question of what method a government should use, when it operates business undertakings like railways and electricity supply, will not down. It goes very deep, especially in Australia. Whether it is better to have an "efficient" independent statutory authority run the business or the "slack" kind of organization which trims its sails to parliamentary winds is difficult to determine. (Tied up with this is the question of the degree of freedom and authority which can reasonably be given to experts employed in the business enterprises.) The struggle in Australia to achieve a well-balanced position is thoroughly covered in these volumes. Professor Bland himself inclines toward advocating the claims of the experts to freedom from parliamentary dictation in operating the enterprises, while conceding the necessity, under parliamentary democracy, of their accepting all-over guidance as to policy from the people's representatives.

As to the general problem of the control of the public service, the Australians appear to have no decided answer. They shift from control by a single commissioner to control by a board; and there is also no generally accepted conclusion as to what powers should be granted in either case. Then there is the problem of the relation of the control to the ministers; and the allied problem of the relation of the permanent public servants to the minister. As to the first, it is disruptive of discipline if the ministers overrule the control; and in these extracts it appears that ministerial interference has caused serious trouble at various times. As to the second issue, it appears to be fundamental to parliamentary government. If party government is to have sense, the ministers must have the power to enforce their policies. It should not be within the power of the permanent public servants, no matter how competent, to negative the minister's

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policies, either through bureaucratic resistance or because of political hostility. Theoretically, the public servants should be neutral—or so we say. But public servants are men, and men are political animals. Australian experience shows that a high degree of coöperation can be given by intelligent public servants even to ministers not politically of the same stripe as the servants. But the issue has been raised in Australia in this peculiar form: What stand should be taken when public servants decide to run for elective office? Should they be granted leaves of absence until the election is over and, if defeated, allowed to return to their jobs? Or should they be expected to resign permanently? Various views are held by responsible persons, but clearly it makes for difficulty when a minister knows that Public Servant A. has stood for office for a party of the opposition. He cannot accept the administrative neutrality of such a servant.

Professor Bland has chosen to deal with but two phases of the constitutional problem in Australia. The matter of federal-state relationships is the more important, but the problem of new states is the more picturesque. The two sections hardly do more than scratch the surface, and the reviewer is not satisfied that the scratches are very useful. The basic constitutional issue in Australia today is that of the division of powers. Professor Bland's extracts chiefly show how the federal government took over the tasks assigned to it and how further federal-state coöperation in certain areas might be achieved. This does not go to the heart of the matter. Perhaps the trouble is that really to present the position would require drawing on books, magazine articles and newspaper comment. As to new states, it seems that, the Australian continent being what it is, the new states issue is to a high degree academic. The very character of the country requires large states. Thus far the new states movements seem to have been chiefly important as campaigns of political pressure against unpopular state governments. When their backers achieved office, the movements promptly died.

Movements of this character are made possible in Australia, it seems to me, by the failure to develop adequate systems of local government. The reasons for this are complex, involving both political traditions and the distribution of population, the latter reflecting the influence of climatic controls on the system of production. Within the Australian states the tendency is to concentrate all power in the state governments located in the big capital cities, leaving the local communities only the most elementary functions. The result is that the residents of country districts suspect and believe that their interests are neglected. And if sufficiently roused they set up claims

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for more power—even for statehood. No really satisfactory adjustment has ever been found. Professor Bland is an advocate of giving greater powers to local governments, partly to lessen the evil of bureaucratic control from the center and partly to encourage a greater sense of local civil responsibility which, under the present system, does not develop as it should.

In the metropolitan areas the problem is different. There the basic difficulty is not lack of population. Rather it is that population has made the old boundary lines of little importance. What appears to the traveler to be a closely integrated city is, in governmental terms, a group of independent municipalities. This situation is not unfamiliar in America, the essential difference being that the Australian municipalities are apt to be smaller and their powers limited as compared with parallel units of government overseas. How to create a framework of government better suited to the new conditions is a vexing problem. From Professor Bland's extracts it is apparent that merely transferring the control of the various existing municipalities to a central authority is not the answer, though it is desirable to integrate them along more comprehensive lines. But it is also desirable to retain a large measure of local civil responsibility. In Professor Bland's view—he reprints in this section one of his lucid papers on the problem — the essential point is to develop a system of city government which will allow the central authorities to plan on a comprehensive basis and to employ expert administrators to run the technical services, while leaving the responsibility for carrying out the master plan to minor units. It is, in short, a matter of a proper distribution of powers.

In summary, government in Australia raises few problems not familiar to overseas students, but local circumstances give those problems a different shape from that assumed elsewhere. It is for this latter reason that knowledge of the Australian experience is useful to all concerned with problems of government. Professor Bland's volumes of extracts are an invaluable introduction to the Australian situation if foreign students circle around them a bit before trying to make use of them. Taken "cold" the profit, I fear, will not be as great. For that reason it is not impertinent, I think, to suggest to Professor Bland that he prepare a general introduction to the problem of government in Australia. With such a book in hand, the foreign student will be able to use with greater profit the source material here gathered.

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REVIEWS

Turning Points in Business Cycles. By LEONARD P. AYRES. New York, The Macmillan Co., 1939.—xiii, 214 pp. $2.75.

The chief characteristic of business cycles consists of fluctuations in the production of durable goods. These are caused, normally, by fluctuations in the flow of new capital into business enterprises. A recession in production normally follows a decline in the inflow of new funds, not a contraction in consumer spending. Similarly, an upturn in production is normally caused by a revival in the flow of business capital. In most American business cycles, changes in the flow of capital were internally generated, but in the past twenty-five years they have been influenced in great measure by governmental policies. That, in brief, is Ayres's argument in the present book.

The "normal" business cycles of the past, Ayres explains, were generated by a monetary mechanism. Once a business expansion got well under way, there was a net outflow of cash from the banks into public circulation for use in wage payments and purchases at retail. But cash would begin returning to the banks several months after the peak in business was passed. With the return flow of cash came an easing of interest rates, which caused security prices to rise—first the prices of bonds, a bit later the prices of stocks — and thus created conditions under which new securities could be marketed. The revival in security issues was followed shortly by mounting purchases of durable goods by business enterprises—and a fresh cyclical expansion therefore started. But this expansion was inherently self-limiting, as was the preceding contraction. Several months after the upturn in business, the banks would again begin losing cash to the public; consequently, interest rates hardened, several months later bond prices turned down, stock prices followed bond prices, and capital issues followed stock prices — since new issues cannot be marketed successfully on a falling market. This made it impossible to continue the production of durable goods at the former level, and as a result business slumped. But the slump had normally an automatic corrective: several months after the downturn in business, cash would begin returning to the banks, which would again cause an easing of interest rates, and thus start a new business cycle on its career.

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Ayres draws heavily on statistical data to support this interesting theoretical sketch. Unlike many others who have sought to explain business cycles by purely speculative devices, he makes an effort to measure business phenomena and to direct his explanation to the facts of experience. The sad part is that Ayres restricts observation to a small segment of experience—little more than the world of corporate finance, although the cycles that he is trying to explain are American business cycles since 1830. There is no analysis of the part played in business cycles by the changing relations of costs and prices, or the part played by savings, inventories, merchandising, or fluctuations of harvests—all of which practically go unmentioned. The few factors that are observed are conceived as influencing one another "normally" in a linear sequence, not as mutually interacting. There is virtually no recognition that security prices may break under an extra heavy load of new issues, or that constructing first and arranging permanent financing later have been fairly common business practices, or that the volume of current production reacts on security issues, security prices, and a host of other processes—not merely on the reserve ratio of commercial banks.

Ayres attempts to demonstrate that the sequence of cyclical upturns and downturns in different financial series has been in line with his theory. This demonstration, however, is exceedingly crude—as the following observations illustrate. (1) The cyclical turns of different series are measured from dissimilar forms of the data. The turns in the index of business are dated from trend-adjusted data; the turns of commercial paper rates and capital issues are determined from twelve-month moving averages, while the turns of bond and stock prices are dated from data adjusted neither for trend nor for erratic movements. (2) Since there are "a good many instances of double or multiple tops in periods of prosperity, and of double or multiple bottoms in depressions" (p. 4), Ayres decides to take the *latest* top or bottom of each cluster in his index of business activity as the date of the cyclical turn in business. This rule is applied not only when the multiple peaks or troughs are approximately equal, but also when they differ appreciably. The turn is dated later than the highest point even in 1847, 1856 and 1929—years in which the index of business reached a single, perfectly defined, cyclical peak. (3) In dating the cyclical turns of security prices and capital issues Ayres follows another rule; here he takes the highest or lowest value as marking the cyclical turn. The result of the difference in method is that the tendency of security prices and capital issues to lead the

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cyclical turns in business activity is much exaggerated. (4) Ayres compares the cyclical timing of security prices with that of business activity back to 1830, in spite of the fact that the monthly fluctuations (though not the annual levels) of his index of business activity are derived from data on stock prices and bank clearings from 1861 to 1877, and from data on security and commodity prices before 1861. (5) Ayres finds a corresponding turn in security prices, capital issues, and commercial paper rates at every cyclical turn in his index of business activity. To achieve this regularity, both data and common sense must now and then be tortured. For example, the decline in the index of business from 1926 to 1927 is not recognized, although it was no less marked than the decline from 1869 to 1870 or from 1887 to 1888—which are recognized. Again, the tabular summary reports that a peak of stock prices in 1866 was related to the business peak in 1869, while the trough of stock prices in 1867 was related to the business trough of 1865.

Ayres's tests of alternative theories of business cycles at times lead to strange results. For example, in chapter xii, which is devoted to testing Hawtrey's theory of business cycles, Ayres finds that "under normal conditions there is little cyclical variation in the volume of bank credit" (p. 118). This conclusion is based upon a comparison of bank credit figures unadjusted for trend with a trend-adjusted index of business; however, Ayres also says a little about what happens when the trend of bank credit is removed—namely, some correlation emerges, "but it is not strong and consistent" (p. 121). In chapter xiv, where Ayres develops his monetary mechanism of the cycle, he analyzes bank credit figures exclusively in trend-adjusted form, finds that the cyclical turns in these figures correspond, over the fifteen cycles covered, to the cyclical turns in business, and announces that the downturn of bank credit typically "comes four months before that of business activity, but its upturn comes two months before that of business" (p. 136).

The conclusion reached in chapter xii leads Ayres to investigate in the following chapter the "interesting and important question", why capital issues, which are roughly representative of long-term debt, should move in harmony with business cycles, when outstanding bank credit, which is representative of short-term debt, "tends to show a long-term secular growth without much regard for the business cycles" (p. 125). Of course, there is no problem here, since capital issues indicate gross additions to long-term "debt", while outstanding bank credit is the cumulative of net additions to short-

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term debt. But having once seen a problem where none exists in fact, Ayres proceeds to argue that as a general rule new bond issues, like their short-term counterpart, have been insensitive to business cycles, and that the wide swings of total security issues have been due mainly to the movement of stock issues and refunding bond issues. Since refunding issues do not provide new funds to business enterprises, Ayres concludes that "business recoveries have in the past been largely financed in this country by the sale of new issues of stock, and in only small degree by increases in the funded debts of corporations, and by bank borrowings" (p. 129). But Ayres's figures show, in fact, no stock issues before 1882, and before 1890 no year in which stock issues reached 20 per cent of total capital issues. If, then, Ayres is right in claiming that new bond issues have been cyclically insensitive, his elaborate statistical argument concerning the causal primacy of capital issues in regard to business cycles seems to reduce to the suggestion that business recoveries over a substantial part of the period covered by his analysis were largely financed by refunding bond issues.

Such imperfections of statistical method and argument mar the book, but do not destroy its value. Ayres discusses competently some current problems, particularly "pump priming". He stresses a lesson that the current generation is much too prone to forget—namely, that the driving force in our economic history has come not from consumer spending, but from the far-flung activities of enterprising business men. Perhaps most important of all, especially to the technical student of business cycles, is the demonstration that capital issues have probably conformed closely in time to business cycles over many years. The demonstration is made possible by a new compilation of monthly figures on capital issues since 1863, obtained at what must have been a tremendous cost from the files on listing statements of the New York State Exchange. This series is of such great importance that it is to be hoped that Ayres will find the opportunity to publish detailed notes on its exact composition, and thus enhance its value to the many economists and historians who are likely to employ it in future investigations.

ARTHUR F. BURNS

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Monopoly and Competition in the English Coal Trade, 1550-1850. By PAUL M. SWEEZY. Cambridge, Harvard University Press, 1938.—xii, 186 pp. $2.50.

Since the appearance of John U. Nef's excellent and comprehensive *Rise of the British Coal Industry*, it has been extremely difficult to find anything of significance to add to the history of the coal trade. In this book Dr. Sweezy admits as much, but he contends that by centering his attention on monopoly and combination in the coal industry of the Tyne basin, he is not "carrying coals to Newcastle", but that he is adding an important chapter to the history of coal and to the history of capitalism as well.

The story which Dr. Sweezy tells is briefly this: From the coal gild organization in the Tyne valley there was formed in 1600 the Company of Hostmen for the express purpose of limiting the number of coal traders. The members of this organization wanted to curb production and thus to raise prices, but their efforts in these directions were nullified by a special order of Privy Council, by popular opposition, by common law, and by statute. In spite of this experience, however, efforts to form combinations to control competition always developed when the market was not expanding or when the demand was falling. Thus between 1720 and 1750—years of stationary demand—three of the largest producers on the Tyne formed a secret combine, the Grand Allies, to regulate the trade. From 1750 to 1770, an increased demand for coal and relatively high prices attracted new capital into the industry until the Grand Allies no longer dominated the field. Then, when the demand slowed down and prices subsided to less profitable levels, a new combination was formed — the Limitation of the Vend (1772)— which was to remain in existence for sixty years. Only when railways began to be built, when steam engines were installed on a large scale to provide manufacturing power for factories, and when the production field for coal was widely extended, did the Limitation fall into oblivion.

From this case study, Dr. Sweezy concludes that capitalism developed in the early modern period under a form of state paternalism, because given trades needed protection and special privileges to attract capital. As markets expanded and technological changes opened up new trades, lucrative opportunity for investment made laissez faire both possible and profitable. With the growth of large-scale production and a tendency for productive capacity to outrun the market, combination again became attractive, if not essential.

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At this stage of development, the state entered the picture once more, for, controlled as it was by capitalists, it endeavored to save the tottering profit system by imperialism, armaments, and other governmental enterprises. "A new world war, which it is difficult to imagine that the capitalist system will survive, is the only conclusion to which one can logically look forward."

On this cheerless note is concluded a study that contributes less to the history of the coal trade than to one phase of capitalist development—to the problem of combination for the control of competition. The "deadly logic" with which Dr. Sweezy concludes his book does not take into account the great flexibility of the capitalist system to adapt itself to new conditions.

SHEPARD B. CLOUGH

As Steel Goes, . . . : Unionism in a Basic Industry. By ROBERT R. R. BROOKS. New Haven, Yale University Press; London, Oxford University Press, 1940.—xii, 273 pp. $3.00.

As the title of Mr. Brooks's study suggests, it is generally believed that the anti-union policy of many American industrialists has been reflected, if not conditioned, by the attitude of United States Steel. At Homestead, in 1892, Andrew Carnegie and H. C. Frick broke with the union, and after some hesitation their example was followed by the industry and its largest corporation. The bitter and violent struggle between the National Erectors' Association and the Structural Iron and Steel Workers' Union, in which dynamite was the chief weapon of the men and spies of the employers, reached back into the steel industry through the American Bridge Company and the ambition of the union to organize fabrication from the vantage point of the construction industry. When twenty-two union officials were finally jailed in Indiana for the dynamiting of bridges and buildings, and the MacNamara brothers and others were convicted in California for the Los Angeles *Times* explosion, trade unionism in the United States was set back twenty years. The strike of 1919 was an attempt not only to organize the steel industry but to break the hold of its example on other employers. Its failure seemed to settle the question of unionism for years to come.

The capitulation of U. S. Steel in 1937, when Carnegie-Illinois signed an agreement with the Steel Workers' organizing committee, came as a surprise to most of those familiar with the past and gave some color to optimistic expectations of the rapid spread of unionism in mass production industry. Little Steel's refusal to follow Big

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Steel's example toned down the more extravagant expectations but the success of the S.W.O.C. with Jones and Laughlin atoned in part for the failure with Bethlehem, Republic, Inland and National.

Mr. Brooks's clear and thoughtful story tells us not only what has taken place on a wide and varied front, but what has yet to be accomplished. Extravagant expectations will be deflated by the record, and the reader will in all likelihood be most impressed by the size of the job yet to be done. For, as the author points out, recognition of the union is little more than an introduction of the parties to one another. It may mean little or much, depending on the good faith and abilities of leaders on both sides in dealing not only with wages, hours and grievances but with the continuing problems of the industry such as unemployment, housing and community life. Mr. Brooks is convinced, and he gives the impression that the union officers share his opinion, that unionism can and must make a positive contribution to the solution of industrial and community problems if it is to do its job successfully. This is a comparatively new and ambitious conception of the function of a union, going much beyond traditional bargaining; and there is some danger that fundamentals may be neglected if too much emphasis is placed on the larger job. It is perhaps a matter of timing. Once basic collective bargaining is established it should be possible to branch out, but impatience with the slow development of constitutional government in industry too often drives ambitious union officials into reform agitations and politics to the detriment of the elementary but necessary work of pure and simple trade unionism. There are some indications in Mr. Brooks's story that this has occurred in steel.

To this reviewer the most interesting part of Mr. Brooks's study is that which shows the development of the company unions. Organized on a plant basis they soon discovered that they were limited to grievances in their dealings with management. This led to "a revolt of the company unions" encouraged by the S.W.O.C. and paid for unwillingly by the companies themselves. The more aggressive of the company union leaders formed the "C.I.O. Representatives Council", cutting themselves out of company funds to gain independent status, and hastened if they did not actually bring about the Big Steel's change of front.

Mr. Brooks leaves us with the impression that the organization of steel was well managed and, aided by government, achieved remarkable success.

NORMAN J. WARE

WESLEYAN UNIVERSITY

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One Thousand Strikes of Government Employees. By DAVID ZISKIND. New York, Columbia University Press, 1940. — xvi, 279 pp. $3.00.

In collecting information on government strikes, Dr. Ziskind has performed a useful and effective job. Their cause and development are examined, and the results of the controversies are analyzed. Strikes have taken place in virtually every branch of government activity, and they have involved both professional and manual workers. The factual material contains a wealth of detail intelligently presented. Yet it seems to the reviewer that the inclusion of walkouts on the W.P.A. with those in other government divisions tends to inflate the actual number of such controversies. W.P.A. workers are neither permanent employees nor paid on the same basis as other government workers. The type of discipline expected from other government employees is usually not demanded from those on the W.P.A. The issues involved in government strikes are similar to those in private industry. Disputes over wages, hours of labor, discrimination and union organization are usually responsible for organized action.

The work, despite its merits as a factual compilation, does not carry us very far in its discussion of the general issue of strikes in government. The author insists that government workers have the right to strike. Has the government the correlative right of defending itself against such movements? Workers in private industry can strike, but employers can hire strikebreakers, close their plants, or take other lawful steps to bring the workers to terms. If government employees utilize the strike weapon, what steps but resistance are open to the government unless one assumes that whenever such disputes arise the workers are inevitably right? The author's notion that a strike in government employment is a strike against an official and not against government as a sovereign power does not seem of much significance. Does a strike in the government service interfere with the present or prospective profit of an official, or does it endanger the life and safety of citizens, or at least inconvenience them? One can agree that there is nothing inherently unpatriotic in such strikes, but should the government therefore refuse to utilize its power to overcome them?

Aside from the effect upon those directly involved, strikes of government employees such as policemen or firemen may arouse resentment against the general labor movement and encourage restrictive legislation. This possibility is, no doubt, responsible for the oppo-

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sition of leaders of labor to strikes in government. The argument that such strikes are a part of democracy need not be taken too seriously. Yet, if government employees are forbidden to strike, some means must be found whereby exploitation and abuse by capricious bureaucrats can be prevented. It is especially important that such protection be devised in view of the expansion of government activity to fields formerly reserved for private industry. It is, therefore, necessary to grant government workers the fullest freedom to organize and to bargain collectively. As a substitute for strikes, panels of disinterested citizens might be set up to consider more serious differences.

BROWN UNIVERSITY PHILIP TAFT

Cooperation: An American Way. By JOHN DANIELS. New York, Covici Friede, 1938.—399 pp. $3.00.

This book is the most comprehensive survey of the coöperative movement in the United States. "Cooperation's upward surge in the last five years during the very time that capitalistic business has been wallowing in the mire of depression" impelled Mr. Daniels to make a current survey of the movement with which he first came in contact while conducting an investigation for the Carnegie Corporation in 1919. To fulfil his desire the author traveled some 5000 miles, visited leading coöperative enterprises, interviewed the important leaders of the movement and government officials interested in the progress of consumers coöperation. The result of his findings is the volume under review.

Its outstanding feature is Mr. Daniels' account of both the extent and depth of coöperative roots among our agricultural population. Antedating the activities of the Rochdale Pioneers in England, and the commercialization of insurance in America, farmers throughout the country established in the 1820's mutual fire insurance companies organized along coöperative lines. The National Grange not only promoted but actually launched many ambitious, indeed overambitious, coöperative enterprises, only a few of which survived the economic disturbances of the decade of the seventies. Again, after the World War, many farmers resorted to coöperation as a method of solving their problems. The most immediate need was to sell their products; hence coöperative marketing associations flourished—in some instances with governmental assistance—on an amazing scale. In 1936 they accounted for a membership of 2,710,000 and an operating volume of $1,586,000,000 (p. 156).

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The agricultural revolution created for the farmer the problem of purchasing his supplies in addition to that of marketing his products. Once again he utilized the coöperative method of meeting this obstacle. The past twenty years witnessed a startling development of agricultural purchasing coöperatives which in 1937 had a membership of 1,000,000 and a business turnover of $400,000,000, or one eighth of the total farm supplies sold (pp. 169-171). These coöperatives expanded their enterprises in recent years to include consumers' goods because the age of farm specialization necessitated a greater expenditure for household articles (electrical appliances, canned goods, radios, etc.) than for farm supplies. Repeated surveys have shown this to be the case especially for farmers with small incomes (p. 194).

When Mr. Daniels views coöperation as an outgrowth not merely of "the abuses which have sprung up under the capitalistic profit system" but out of the very nature of capitalism "even though that system could be stripped bare of all abuses" (p. 380), he is on solid ground. His notion that the goal of coöperation is a "mutation of capitalism" is in accord with the best philosophy of the movement. But when the author poses "rootedness" and a "sense of community" as explanations for extensive coöperative activity in rural areas, when contrasted with almost negligible similar enterprises in urban centers, he is sledding on thin ice. Coöperation's greatest headway in towns and cities has been among the foreign population, especially Scandinavian, among whom "rootedness" and a "sense of community" have been less significant than among our native population. On the other hand, the history of coöperation both here and abroad proves beyond a doubt that the coöperative method is employed wherever existing institutions cannot supply an obvious need. The current interest in coöperative medicine is a case in point. Our farming population's interest in coöperation can only be explained as part of the "agrarian crusade" during the "era of agrarian discontent".

In his otherwise excellent volume, Mr. Daniels commits a sin of omission. He glosses over the problem of chain and department store competition which urban coöperatives must meet. In Europe coöperative and not private enterprise was the pioneer in scientific management and large-scale production and distribution. In America the converse is true. How can town and city coöperatives, which must of necessity start on a moderate basis, meet the competition from large-scale enterprise? That is the Achilles' heel of our co-

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operatives. To what extent will the consumer, especially the housewife, be willing to forego immediate savings for the sake of the ultimate ideal of the coöperative commonwealth is a question to which no satisfactory answer has as yet been given. The author should have discussed this problem at length and informed the reader of the experience of our coöperatives in dealing with it. His failure to do so is a serious shortcoming of the book.

In spite of this drawback, Mr. Daniels made a notable contribution to the economic and social history of our country. His well-written volume will amply repay the reader.

EDWARD M. COHEN

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Canada, 1763-1841: Immigration and Settlement: The Administration of the Imperial Land Regulations. By NORMAN MACDONALD. London, New York, Toronto, Longmans, Green & Company, 1939.—xii, 577 pp. 21s.; $8.40.

Building the Canadian West: The Land and Colonization Policies of the Canadian Pacific Railway. By JAMES B. HEDGES. New York, The Macmillan Company, 1939.—vii, 422 pp. $4.00.

The Wheat Economy. By G. E. BRITNELL. Toronto, University of Toronto Press, 1939. Distributed in the United States by the University of Chicago Press.—xvi, 259 pp. $2.50.

While these three books deal with widely separated periods or with different topics, they are closely related in that they are all on the subject of land settlement. Mr. Macdonald's book discusses this for the British North American colonies, 1763-1841, Mr. Hedges surveys a phase of the settlement of the Canadian west from the year 1880 to the present, and Mr. Britnell's study takes up the story after the initial period of settlement has been passed.

In the United States, settlement was a continuous process from the earliest days until its completion, but in Canada there have been two separate chapters in the story, totally distinct in time and space. Settlement of the available land east of the lakes was practically complete by the middle of the nineteenth century. No amount of unaided valor on the settler's part could have enabled him to cross the inhospitable thousand miles of the Canadian Shield and so reach the prairies; hence he had to wait until a railway could be built. It was a generation before that could be done and the best part of another before conditions encouraged settlement. Hence half a cen-

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tury and over a thousand miles divide the first period of Canadian settlement from the second. The two adventures have also been totally dissimilar in nature. Eastern settlement took place in heavily forested, well-watered country of irregular topography; western settlement was concerned with the flat, sub-humid and semi-arid treeless prairie. Nature can hardly afford greater contrasts, and for the Canadian there was no intervening zone of adaptation. It was a stark transition he had to make.

It is only one tragedy of this tragic world, and perhaps a minor one, that no sooner was the prairie west settled than a drastic turn in conditions began to unsettle it. This constitutes a third chapter—the unfortunate pioneer caught in the death agonies of a heretofore secure world (in this particular case his plight accentuated by natural conditions of great severity) and plunged overnight from the pride of his frontier strength to the humiliation of a rural proletarian.

The three books under review, together with others similar in character, bring out the elements common to settlement everywhere. Although each frontier knows little of, and profits less from, experience elsewhere, the story is always much the same. The same hopes are raised, the same difficulties encountered, the same mistakes made, and the same disappointments experienced. Settlement seems always to have been a rule-of-thumb business, and that for the very good reason that no one can settle the land but the settler and he is necessarily very much of a rule-of-thumb person.

Perhaps the most conspicuous constant element in the process is the idea that public profit may be realized from the public land. All available experience indicates that no public body has ever managed to get much more out of the land than it has had to put into it, and, as a general rule, much less. Of course certain individuals and corporations have made money from the public lands they have acquired but usually they have made it from their unearned increment or speculatively, because of "land booms"; in such cases, what some have made others have lost. The only value that land seems to have is what labor puts into it. Even the Canadian Pacific Railway Company, with its little empire of 25,000,000 acres of land "fairly fit for settlement", its command of large supplies of capital to support the disposal of these lands, its endless energy and its sixty years of opportunity, on balance will probably have realized very little profit. Mr. Hedges (p. 396) thinks it may eventually make about $2.00 per acre, but it is more than likely that with the future that Canada faces most of this sum will be eaten up.

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Every settlement starts with high hopes of keeping out the speculator. But he always gains admittance and always gets in the way of the settler, either securing an unwarranted share of the increment or remaining to hang round the farmer's neck in the shape of a mortgage. Per contra, the true settler's difficulties are always the same: poverty, or at least no money, and, everywhere and always, debt. Debt leads to abandonment of holdings, to shifts in population, prolongs the process of settlement indefinitely. The land is an insatiable monster that eats money and labor. Before a new community is solidly built, one or two generations, it seems, must be consumed.

But there are various ways of alleviating the struggle. The first and greatest is a system that will give surety of title. Mr. Macdonald's book illustrates how not to do this. In the long sorry history of land settlement, there never was a sorrier chapter than that of the colonies remaining to Great Britain after the American Revolution. Their history embalms classic cases of stupidity, cupidity, irresponsibility and corruption. Mr. Macdonald's book is a repository of them. But it is a pity that this ambitious study, crammed with research, should be marred by innumerable small errors of fact and language—on one page alone no less than five were noticed.

Difficulty over titles was not experienced in the Canadian west, where the survey and land title systems have been of a high order. It is significant that no mention of such difficulties occurs in Mr. Hedges' book.

Another alleviation consists in convenient transportation. The east was settled from waterways and primitive bush trails, the west from the railways—hence the rapidity of its occupation. The land-grant railways have had to adopt wise and liberal policies of settlement, for their primary concern is transportation, not the sale of their lands. Mr. Hedges' book is devoted to the innumerable phases of the colonization policy of the Canadian Pacific. That company has doubtless been as wise and as liberal as a private company can be, but apparent everywhere in the study is the eye single for economic gain. It is a criticism of the author, too, that he tends to see the problem of settlement in the same light, to the neglect of its larger social aspects. After all, men are not mere producing units, and the only satisfactory result to any colonization policy is a reasonably homogeneous society at peace with itself. It will be many generations before that is achieved in the Canadian west.

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Mr. Britnell's book illustrates only too vividly the fundamental to all settlement: markets. No matter how good the land or how convenient, it will go begging unless something can be done with its products. The depression beginning in 1929 has put an end to the pioneer prosperity of the west, and with the world revolution now upon us the old days of markets abroad may be gone forever. To make matters worse the unparalleled drought of 1931-37 has reduced parts of western Canada to desert. Mr. Britnell struggles manfully, but not convincingly, with the subject of "Rehabilitation". Probably large areas of the west will have to be depopulated, with extremely serious effects on the Dominion as a whole. The author shows a certain lack of courage in facing up to this.

The three books together add much to our knowledge of settlement in general and to that of Canada in particular.

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Canada: America's Problem. By JOHN MACCORMAC. New York, The Viking Press, 1940.—287 pp. $2.75.

"Canada is so close and yet so far away from me. I know less about it than almost any place in the world." Thus wrote an intelligent American high school senior several years ago, and his statement is typical of the ignorance of millions of Americans concerning the history of their northern neighbor. John MacCormac, a Canadian by birth, and for years correspondent for *The New York Times* in Canada, in this book presents his interpretation of the historical, political and economic factors which explain why the Dominion today is not only a problem for Great Britain and the United States, but for herself as well.

The discussion is especially timely. Canada today finds herself in a curious and paradoxical position. Her loyalties pull her to the Empire, many of her interests to the United States. Her "colonial mentality" has been affected by more than a century of fear and dislike of the United States, and this experience helps to account for present-day Canadian nationalism. Canada's recent foreign policy may be described as insistence upon consultation, but without commitments. It has been dictated, to a large extent, by the necessity of developing Canadian unity, in the face of sectionalism, among a people part of whom still ardently love the British Crown, and an-

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other group, the French Canadians, "who have no mother country". The Dominion has gradually developed into a "second center" for the Empire, and may become even more significant in the event of an ultimate Anglo-French defeat in Europe.

In spite of what Canadian politicians and constitutional lawyers may say to the contrary for home consumption, Canada cannot remain neutral in a British war. At the same time, she continues to enjoy the protection of the Monroe Doctrine, and going to war in Europe does not seem to sacrifice the advantages of this protection by the United States. Thus it is easy to imagine a situation in which isolation for the United States may become practically impossible, for the Monroe Doctrine has, in this sense, become an "entangling alliance" for the United States; and Canada is "the Achilles' heel to North American isolation". Canada's sentimental loyalty to the mother country is as great as ever. At the same time, this has not prevented the Dominion from becoming more continentally North American.

Mr. MacCormac, in a style that is arresting, provocative and often brilliant, has analyzed in detail the post-war diplomacy of Mackenzie King, and its political, economic and psychological bases. Under King, Canada gradually abandoned the collective security of the League, rejected specific commitments to the Empire, and refused membership in the Pan-American Union. The author has little sympathy for what he calls this "ostrich policy". His observations about Canadian leaders like Bennett, King, Cahan and Lapointe are based on years of study and personal contacts, and his comments on Canadian party politics, and recent economic developments, can be read with profit even by those who have made a serious study of Canadian history. Canadian and American readers will probably disagree with some of the implications of the author's thesis, but that Canada may become "America's problem", in the light of recent tragic events in Europe, seems entirely plausible. In all likelihood, this war will have even more significant effects on Canada's position in the British Commonwealth and as a North American nation, than the War of 1914-1918 had. Mr. MacCormac's book deserves serious study on both sides of the Canadian-American boundary.

CARL WITTKE

OBERLIN COLLEGE

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Making International Law Work. By GEORGE W. KEETON and GEORG SCHWARZENBERGER. London, Peace Book Company (London) Ltd., 1939.—219 pp. 6s.

This challenging book was compiled from lectures delivered under the auspices of the University of London during the crisis which preceded the present war; it came off the press after the die was cast. Soul searching by international lawyers is as much the order of the day as that by students of political science, history or philosophy. In a world in which old concepts are crumbling under the relentless drive of mechanized armies, one may well be dubious whether international law, or any law for that matter, can be made to work. Yet it is this question which Professor Keeton and Dr. Schwarzenberger attempt to answer. The book certainly has two outstanding merits. First, it is realistic; second, it is written with an easy style, intelligible to the layman, yet not offensive in its simplicity to the technician.

In order to find the path which should be followed, the road already traveled had to be resurveyed. This involved clearing away debris obstructing clear vision. The wreckage is so extensive that the bulk of the book is devoted to a clarifying process through which the authors seek to show "why law now plays so unimportant a rôle in the international society" (p. 12). The evangelist school of international law which gazed starry-eyed at an imaginary world order ruled by law, equity, justice and morality during the twenty years in which the present holocaust was prepared will find disconcerting the frankness with which the authors bare and dissect the defects of the post-war pretense of collective security and the failures of the League of Nations. Their criticism of the "balance of power" idea (pp. 36-38), for which we hoped to substitute the League in 1919, offers slight consolation, for the authors conclude that the supreme, though not always exclusive, law in international society, both before 1914 and after 1919, has been force, the chief and primary instrumentality of power politics. (See chapter ii, pp. 28 *et seq.*, on the "Social Background of International Law", especially pp. 41-42.) Under present circumstances, this conclusion is hardly open to challenge. What then is the function of international law in a society ruled by force? According to the authors, it consists mainly "in supporting the rule of force whose achievements it invests with the sanctity and dignity of law, and in providing a State anxious for the modification of the *status quo* with a convenient excuse for its upheaval" (p. 51). Today, even this accessory func-

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tion, which Messrs. Keeton and Schwarzenberger are prepared to recognize, would appear to be a thing of the past, since the states seeking to expand no longer deem it worth while to cloak their actions even with the flimsy pretense of "legality".

The combination of power politics, secret diplomacy, and the supremacy of force over a law of nations founded on state sovereignty in its absolute form was the cause of the defects in the international society before 1914; and the authors point out convincingly that none of these elements of international anarchy was in reality abandoned when the League of Nations came into existence. Hence the substitution of law for force which the drafters of the Covenant had in view was not accomplished, and efforts to find a politically equivalent substitute for war for the settlement of "non-justiciable" controversies—i. e., the real causes of war—by the simultaneous solution of peaceful change, security by disarmament and the peaceful settlement of international disputes failed. The objectivity with which blame is attributed to the Allied Powers for their share in this failure and the rebuttal of the general assumption that the failure of the League was due largely to the absence of the United States are examples of Anglo-Saxon tradition of fairness. The chapters dealing with post-war developments (chapters vi-ix) from the establishment of the League to its breakdown—the authors choose politely to call it "The *de facto* revision of the Covenant and the Return to Power Politics"—are a sober, completely detached and therefore devastating analysis of the temporizing, sometimes dishonest, but in most instances merely short-sighted and uninspired, policies of states both inside and outside the League of Nations.

The solution offered by Messrs. Keeton and Schwarzenberger is supra-national federalism (chapter x, pp. 193 *et seq.*) on a more modest scale than that proposed by Clarence Streit in *Union Now*. Parts of this chapter were rewritten shortly after the outbreak of the war and therefore propound a beginning toward Streit's more ambitious project by urging the maintenance and broadening of the Anglo-French coöperation devised for the more effective prosecution of the war. This solution is predicated upon the authors' belief that federalism, as practiced in the United States, Canada, Australia, Switzerland and the second Reich, "is the only method of government so far evolved which reconciles localism with the necessity of association for the protection of certain defined common ends" (p. 202).

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We are in no position today, in the midst of a world revolution, to take a definite stand as to the future shape of the world community. The value of this book is believed to be not in its suggestion for the future but rather in its reappraisal of the past. It ought to weigh heavily on the conscience of statesmen who seemed to believe, or disingenuously caused peoples in many countries to believe, that war could be eliminated by mere declarations of honest intent to do so (*cf.* p. 146); and even more heavily on the soul of international lawyers, political scientists and historians who used their influence and scholarship to strengthen the mistaken belief that the mere absence of war was equivalent to peace (*cf.* p. 185). Our errors during the past twenty years are indeed numerous, and we now are paying a ghastly price for mistakes which should not have been made. Perhaps when this war is over and if there is still anything left on which to rebuild, there will be more realistic appreciation of the fact, even among international lawyers, that a new world order cannot be created overnight; and that the better international order to which most of us aspire must be built upward, from a solid foundation, rather than from the top down. This book ought to help us toward that realization.

FRANCIS DEÁK

COLUMBIA UNIVERSITY

The Quest for Peace since the World War. By WILLIAM E. RAPPARD. Cambridge, Harvard University Press, 1940.—xx, 516 pp. $4.00.

From his vantage point at Geneva, Dr. William E. Rappard has been surveying the quest for peace ever since the World War of 1914-18—sometimes himself playing an active rôle which gave him practical insight as to the forces and personalities involved. This book presents his keen and scholarly appraisal of Europe's efforts to organize a stable peace, down to the eve of the present cataclysm. He traces the influence of the idea of "organized peace as a war aim", showing its British origin and its effectiveness in transforming American neutrality and in raising Allied morale (pp. 18-59). He then considers the interplay of national interests and international motives in the framing of the peace terms, emphasizing the concessions made by England and France in their original demands for territorial expansion — particularly the settlement of the colonial problem on the mandates basis (chapter ii). In this connection Dr. Rappard reaches a conclusion which will startle those who have

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allowed themselves to find an easy scapegoat for the world's ills in the "injustice" of the Treaty of Versailles, for he contends that "the map of Europe as redrawn in 1919 expresses a far greater measure of justice than either that which preceded or that by which its principal critics seem determined, if possible, to replace it" (p. 479).

M. Rappard makes a careful and well-documented study of the drafting of the League Covenant, concluding that "Its significance was far greater by reason of the unprecedented opportunities it presented for the future prosecution of the quest for peace, than by reason of the immediate security it offered its member states" (p. 133). In the next three chapters, he proceeds to examine how far European statesmanship availed itself of those opportunities during the two decades between 1920 and 1940. He discusses the persistent efforts of this period to perfect the machinery for the pacific settlement of international disputes; he thinks the paradox of the League's relatively greater success in settling actual disputes in the earlier decade indicates, not the futility of constructing peace machinery, but the necessity of "a policeman competent . . . to bring to the bar all recalcitrants" (pp. 205-7), and he therefore devotes a long and important chapter to "The Rise and Fall of Collective Security" (pp. 208-334). His conclusions on this point are most effectively summarized in the final chapter: "In the international field in the course of the last twenty years, the legislator has been active but has lacked boldness, and the judge has been conscientious but has lacked authority. The policeman, on the other hand, has been neither active nor conscientious and has lacked both boldness and authority" (p. 485). Thus he blames the policeman—"the collective will and the organized power of the international community"—for the collapse of world peace.

There is a very interesting chapter on "The Tragedy of Disarmament", pointing out that the failure of the whole prolonged effort (from inter-Allied activity in 1920 down to the collapse of the Disarmament Conference after 1934) came because "The nations which had been at war with each other from 1914 to 1918 had never concluded a real peace in that they had never succeeded in regaining each other's confidence" (p. 494). He believes that the Allies cannot be held responsible for this — that Fascism dates from 1922, Bolshevism from 1917, and that Hitler's professed devotion to disarmament might have been expected to be no less a matter of temporary expediency than his similarly professed devotion to "self-

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determination"; that "the realization of the ideal of a general reduction of national armaments was not possible in Europe for the generation which witnessed the triumph of aggressive dictatorships in the three most populous states of that unfortunate continent" (p. 495).

In spite of the tale he must tell "of disappointed hopes and of frustrated efforts" and his thoroughly realistic analysis, M. Rappard is no pessimist; he thinks the peacemakers of 1919 were aiming at goals not inherently inaccessible, but that they were betrayed by their successors (pp. 496, 501). He offers a useful warning to the peacemakers of the future: if they wish primarily to do justice, and apply the principle of self-determination, "their settlement will be stable only if it is better protected by their continued vigilance against the counter-offensives of those who do not share their conceptions of justice"; on the other hand, if their chief aim is stability without international guarantees, they will have to "sacrifice self-determination to considerations of political equilibrium" (p. 499). If political freedom and self-determination are worth fighting for, "then they should be maintained when achieved."

M. Rappard provides us with an excellent perspective on the world's quest for peace throughout the interlude between two world wars, a perspective that should prove helpful to the statesmen of the future in avoiding the mistakes of that era, and to citizens everywhere who wish to play more intelligently their part in shaping national policy to avert another such catastrophe.

Helen Dwight Reid

Bryn Mawr College

Treaty Relations of the British Commonwealth of Nations. By Robert B. Stewart. New York, The Macmillan Company, 1939.—xxi, 503 pp. $5.00.

This monograph is a meticulously careful and detailed study of the development of treaty-making procedure in the British Commonwealth. As such it is an important contribution to the history of the evolution of the Commonwealth, for, as the author says, "the most revealing element in the development of . . . equality of status is the gradual acquisition of treaty-making power by the self-governing colonies because it portrays them in their international personality." In successive chapters Dr. Stewart deals with the political structure of the Commonwealth, the development of Do-

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minion representation in treaty making, the Belgian and German treaties of 1862 and 1865 and the movement for Empire preference, the application of British commercial treaties to the Dominions and colonies, technical and other treaties prior to the World War, Dominion participation in the treaties of peace and in the League of Nations, treaty making since the World War, the great seal and treaty making, present-day treaty-making procedure, international labor conventions in the federal Dominions and India, and the *inter se* doctrine and Commonwealth treaties. There is a concluding chapter of summary and conclusion, and there are fifteen appendices of documentary material and a selected bibliography.

The work is firmly grounded on official sources, especially various treaty series and the records of colonial and imperial conferences, and the secondary literature bearing on the subjects discussed has not been neglected. The author expresses particular indebtedness to Professor W. Y. Elliott, who contributes a foreword; and for everyone who concerns himself with any aspect of the constitutional development of the British Commonwealth the writings of A. Berriedale Keith are compulsory reading. It is clear, however, that Dr. Stewart regards as unimportant in substance certain forms used in Dominion treaty making to which Professor Keith has attributed significance as evidencing a degree of British control over Dominion treaties. Professor Keith can be detected between the lines in the following passage relating to the new seal struck by the Irish Free State in 1931:

> No longer . . . could it be maintained that the use of the Great Seal of the Realm and the necessary intervention of a British Secretary of State retained even the appearance of diplomatic unity throughout the British Commonwealth. Both of these were now abolished [for the Irish Free State]. Thus those who had cheerfully pointed to the Great Seal of the Realm as sufficient evidence of Imperial unity in external affairs unwittingly and unwillingly became the fathers of a separate Royal Great Seal for Ireland (p. 217).

In a book packed with facts and abounding in detail the author is to be warmly commended for maintaining an exceptionally high standard of accuracy. Very few *corrigenda* have been noted. It might have been pointed out (p. 3) that as early as 1884 Lord Rosebery called the British Empire "a commonwealth of nations".

ROBERT LIVINGSTON SCHUYLER

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The Politics of Democracy: American Parties in Action. By PENDLETON HERRING. New York, W. W. Norton & Co., 1940.—468 pp. $3.75.

The sophisticated book buyer has certain standards by which he distinguishes good books from bad, significant ones from trivial, the interesting from the dull, the scholarly from the superficial, and the honestly argumentative from those of dubious and even dishonest special pleading. Among these standards are the character and reputation of the author and publisher, the validity of sources and materials used, the literary style and structure of the composition and the extent to which a rational treatment triumphs over emotional or dogmatic asseveration. Judged by all these criteria *The Politics of Democracy* represents an exceptionally high level of achievement.

To say that Herring's book is timely is to give inadequate expression of its significance for those who believe in the perpetuity of free institutions and the democratic way of life. It is much more than an account of the form and structure of American politics, for it cuts deeply into the economic and psychological substrata underlying the contest for political power. Parts I and IV contain one of the most lucidly expressed and penetrating analyses of the theoretical assumptions upon which American democracy rests that I have seen. At the risk of hyperbole I should not hesitate to bracket it with De Tocqueville's treatise on *Democracy in America.* Especially notable are the chapters on "The Faith of Democracy", "Conditions Favorable to Popular Rule", "Leadership Under Party Government", "Innovation and Conservatism", "The Impact of Economic Inequality on Politics", and "The Animating Spirit of American Progress".

Between expecting too much and too little of American parties and politicians, Herring steers a sane and on the whole optimistic middle course. He knows that Heaven is not reached in a single bound and that the road to Hell is often paved with sublime intentions. High-minded leaders on the one hand and corrupt self-seeking bosses on the other are as often the symptoms as the causes of a well or poorly governed state. Herring never loses sight of the intimate relation between theory and practice. "It is futile", he writes, "to appeal to the unselfishness of hypothetical good citizens or to the sanctity of abstract principles as a warrant for denying human needs." And at another point he says: "The party system in the United States has produced many politicians who are fixers and manipulators and little else beside. While subjectively we are irked by the unprincipled or contraprincipled attitude of many politicians, it does not follow that the function of adjustment as such should also

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be condemned. . . . Seers and men of high vision there must be but the workaday world calls for a frequent shift of focus. The politician is no star gazer. As F. S. Oliver has put it, 'His eyes are not fixed on the millennium nor yet precisely on the end of his own nose but somewhere between the two.'"

Professor Herring is thoroughly familiar with the detailed facts of the American political process and they are set forth here in abundance. But he is not concerned with the facts as such except as they may be used to throw light on principles. For this he must expect the maledictions of those political scientists who operate on the theory that "ye shall know the facts and the facts shall be sufficient unto themselves". It is significant that with the exception of a chapter on "The Structure of Our Party System" Herring's chapter headings are indicative of his concern not merely with the *How?* but the *Why?* of American politics. Consider for example these titles: "The Uses for National Conventions", "Channeling Intelligence into Party Activities", "The Traditional Politician and the Service State", "Community Standards and Political Ethics", "Class Cleavages and Party Loyalties", "The Significance of Third Party Activities", and "The Limitations of Debate".

No brief review can do justice to this excellent book. On every page the reader will find food for thought expressed in delightful prose. For example: "Our political contests recall at times the methods of ancient Chinese warfare, wherein each side tried by superior din and terror-inspiring banners and slogans to scare the others into surrender. When the dust of battle cleared away the carnage was usually found to be negligible."

I am not sure that Professor Herring would agree but it seems to me that his thesis can be summed up in his own words as follows: "Democracy now makes a greater demand than ever before on men of intelligence and good will; but through the rule of law and the common acceptance of our procedural devices we have machinery and traditions for adjusting human passions and aspirations. . . . The people march. Change is inevitable. The future is unknowable, but men at some time are masters of their fate. The faith of democracy [in the will of the people and the rationality of the common man] may not prove workable but it holds the clearest hope for civilization today. To a world threatened by Caesarism it has the courage to declare, 'The fault, dear Brutus, lies not in our stars but in ourselves that we are underlings.'"

PETER H. ODEGARD

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The Plans of Men. By LEONARD W. DOOB. Published for the Institute of Human Relations by Yale University Press, New Haven; Oxford University Press, London, 1940.—xiii, 411 pp. $3.00.

As I undertake to criticize *The Plans of Men*, I have before me, also for review, *A Century of Social Thought*, a series of papers by distinguished contributors on the last hundred years in the social sciences. One book looks to the past and the other to the future. One stirs nostalgic recollections of the little red school house and the good old days of laissez faire and the laws of supply and demand. The other brings to mind the strange future that rushes upon us, grim and forbidding. But though the backward look is easy and more congenial to the taste, the more important deliberations for a long time to come promise to be turned in the other direction.

The Plans of Men, dealing primarily with planning in and for the United States, is written in the declared belief that in charting a course as pioneers through the unknown future that awaits us, "science represents more of the wisdom than the foolishness of the ages, and in this difficult world approaches to wisdom cannot be dismissed by calling them academic or theoretical" (p. 16).

An impressive obstacle, early encountered, is the choice of values. To what ends should social plans be directed? This the author handles easily; perhaps too easily as is the habit of the sciences, by disavowing it and postulating a sort of "psychological hedonism" (p. 159) as a working guide. Plans should be directed toward the gratification of human desires and the avoidance of human frustrations. Whether all gratification and no frustration is good for the soul; whether the Lord loveth whom he chasteneth; whether, as Mr. Justice Holmes has suggested, predestination may not have ordained that the inevitable be brought about through human struggle, are big questions which the book, contrary to the usual practice of referring them to the philosophers, dismisses as "higher than the clouds" and not of this earth, though it is conceded that to compensate for frustrations has sometimes been the motivation to achievements of great human and social value, a concession that requires caution against the acceptance of the writer's standard of values for more than he offers it, namely, as a tentative and provisional guide.

Within the foregoing limitations, Professor Doob undertakes to show, first in a rather abstract and general way, what contributions

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can be made by the social sciences to the realization of social plans, and then, in Part III, goes into more special applications. No panacea is offered; indeed, there is nothing rash or extravagant about the book. Eugenics can do a little, but our information is too limited to justify any great expectations (pp. 24, 25). Birth control has possibilities, but in actual application may have hindered rather than promoted a superior race (p. 29). Sterilization can help some, though in a negative way it is quite dangerous as a temptation to men in absolute power to sterilize their enemies (p. 26). The biological sciences have not yet established that any one race is innately superior to others (pp. 33, 34). History may be of some use, but since history really does not repeat itself not much is to be expected from that source (p. 71). Economics is no great help, partly for lack of adequate data and partly for the narrowness of its fundamental assumptions (pp. 97, 112). In political science it is not possible to say what particular form of government has been "best" for any group of people (p. 67). Because it both tolerates and implements an opposition, the author leans toward a preference for democracy over totalitarian forms of government, although he has no extravagant impressions of what democracy and liberalism have done for their people, nor, being scientific, does he quite close the door to the possibility that fascism or communism might turn out to be better.

On the whole, the treatment is painfully objective. Only in the chapter on "Regional Planning" does the author indulge himself in even a semblance of advocacy.

The most interesting part of the book, in the preoccupation that now grips the world, is the material on war. Frustrated peoples are prone to aggression (p. 139) in which a "scapegoat" is an "almost universal mechanism" (p. 59). "Master plans" are "alluring expedients to a people made desperate by the conditions that surround them" (p. 377). War is a substitute gratification for the frustrations people suffer at home (p. 92). Professor Doob's treatment of the subject is illuminating, though the reviewer would venture two criticisms. One is that the pursuit of peace is treated too much as a unilateral problem. One nation can force war upon its neighbor, but not peace. The other criticism is that there really are sometimes bona fide and genuine disputes between nations for the settlement of which human ingenuity has as yet devised no authoritative and effective tribunal.

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The Plans of Men renders a double service, one a negative contribution in revealing how meager is the equipment in the arsenal of social prearrangements, and the other, a positive contribution, in estimating with discriminating eye the value and efficiency of the weapons that are there. Both contributions are timely, and the book impresses this reviewer as sanely and carefully done.

BRYANT SMITH

THE UNIVERSITY OF TEXAS

The Saar Plebiscite: With a Collection of Official Documents. By SARAH WAMBAUGH. Cambridge, Harvard University Press, 1940.—xv, 489 pp. $5.00.

Against the background of the stupendous events that were unfolded in the summer of 1940 Miss Wambaugh's meticulous and scholarly account of the Saar plebiscite acquires the spectral quality of an apparition from a bygone age. The general plan of the volume and much of the execution are truly admirable. The study opens with an informative and vivid picture of Saar history throughout the centuries and then examines, in turn, the pertinent provisions of the Treaty of Versailles, the policies of the international government set up in the Saar by the League of Nations, and the organization and the results of the plebiscite of January 1934. The author very properly emphasizes the importance of the economic and social conditions prevailing in the territory, even though she is concerned chiefly with the more technical aspects of the situation bearing immediately on the plebiscite and with the mechanics of the plebiscite itself. Miss Wambaugh, who served as Technical Adviser and Deputy Member of the Saar Plebiscite Commission, had a voice in framing the policies of that body and she takes legitimate pride in what she believes to be its achievements.

The author has studied the Saar question for a number of years and enjoys a world-wide reputation as an authority on international law, especially on plebiscites. Distinguished juridical qualifications, however, do not necessarily imply impartiality. In her volume Miss Wambaugh assumes the part not of a judge attempting to sum up all available evidence in an objective spirit in order to reach a fair verdict, but rather of an extremely able lawyer arguing the case for a client. Legitimate as is such an approach, it greatly impairs, in the opinion of the reviewer, the validity of some of Miss Wambaugh's most significant conclusions.

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The case which Miss Wambaugh pleads with such consummate skill is not an unworthy one. Her book is primarily a defense of the administration of the Saar by the League of Nations and its agencies. *Plus royaliste que le roi* Miss Wambaugh passes lightly over the severe criticisms of the régime established in the Saar by the first Chairman of the Saar Governing Commission, the Frenchman Rault, although these criticisms were voiced not only by neutral observers and by every section of the Saar population, but also by an influential body of French public opinion and even by the Council of the League itself. To Miss Wambaugh, however, Rault is "an excellent administrator" whose enlightened policies the Germans failed to appreciate. The same excessive zeal for the League and its representatives in the Saar makes Miss Wambaugh grossly overestimate the importance of the propaganda by the *Deutsche Front,* while she herself admits that until the advent of Hitler to power the return of the Saar to Germany was a foregone conclusion. No responsible observer of the Saar situation would minimize the difficulties confronting the Governing Commission, yet it is impossible to agree with Miss Wambaugh in her enthusiastic endorsement of the restrictive, oppressive and vexatious policies enforced in the Saar, especially after 1933, by the Governing Commission under the chairmanship of Mr. Geoffrey (afterwards Sir Geoffrey) Knox, policies that acquired a truly totalitarian character with the arrival of the Plebiscite Commission. The use of the very costly international force to which Miss Wambaugh ascribes an important part in the success of the plebiscite was in fact an unnecessary provocation likely to create severe disturbances in any country not possessed of the admirable discipline invariably displayed by the Saar people. "History" is guilty of many grievous errors of judgment, but it is most unlikely that it will ever proclaim the Saar administration "a modern international government", a verdict which, according to Miss Wambaugh, it is certain to render.

Enmeshed in the ingenious intricacies of the plebiscite regulations, Miss Wambaugh does not discuss the broader implications of the Saar problem, although she observes that "it is a question whether the Saar experiment was necessary." The simple facts are that the desire of the Saarlanders to return to Germany was never open to doubt. Had the restoration of the Saar to Germany taken place before 1933 it would have immensely strengthened the position of the Weimar Republic. The legalistically minded leaders of France and the League unfortunately preferred to stick to the letter of the

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Versailles Treaty. The plebiscite of 1934 gave Hitler his first important victory in the international field and the amount of bitterness the "model international government", aided and abetted by the Plebiscite Commission, left in its wake was certainly a contributing element in bringing about the tragedy through which the world, Europe and especially France are living today. Far from being "one of the most picturesque victories for peace", as Miss Wambaugh puts it, the Saar plebiscite may be rightly considered a factor in the making of one of the most disastrous of wars.

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